

purposes by boards of equalization acting for said town or its council which are insufficient because such equalizations or reports thereof were made orally or in incomplete form, and declaring an emergency."

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, and be not printed.

LOVE Chairman.

(Majority Report.)

Committee Room,
Austin, Texas, March 12, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, a majority of your Committee on State Affairs, to whom was referred

H. B. No. 69, A bill to be entitled "An Act to levy a tax upon retail dealers in tobacco and tobacco products and tobacco substitutes for the benefit of the public schools of the State of Texas, based upon the sales price at retail; to provide for the collection of such tax and to require the use of stamps as evidence of the payment thereof; to provide for an inspection of the records and stocks of all dealers subject to the payment of this tax, and prescribing penalties for the violation of this Act, and declaring an emergency."

Have had the same under consideration, and I am instructed to report same back to the Senate with the recommendation that it do pass and be printed in the Journal, but not otherwise.

WIRTZ, Chairman.

(Minority Report.)

Committee Room,
Austin, Texas, March 12, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, a minority of your Committee on State Affairs, to whom was referred

H. B. No. 69, A bill to be entitled "An Act to levy a tax upon retail dealers in tobacco and tobacco products and tobacco substitutes for the benefit of the public schools of the State of Texas, based upon the sales price at retail; to provide for the collection of such tax and to require the use of stamps as evidence of the payment thereof; to provide for an inspection of the records and stocks of all deal-

ers subject to the payment of this tax, and prescribing penalties for the violation of this Act, and declaring an emergency."

Beg to differ with the majority of the committee and report the same back to the Senate with the recommendation that it do not pass.

WITT.

REAL.

HALL.

The bill was ordered printed in bill form.

FORTY-FIRST DAY.

Senate Chamber,
Austin, Texas, March 14, 1927.

The Senate met at 10 o'clock a. m. pursuant to adjournment, and was called to order by Lieutenant Governor Barry Miller.

The roll was called, a quorum being present, the following Senators answering to their names:

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

Petitions and Memorials.

(See Appendix.)

Committee Reports.

(See Appendix.)

Bills and Resolutions.

Messages from the House.

The Chair recognized the Doorkeeper who introduced a messenger from the House with the following messages:

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the
Senate.

Sir: I am directed by the House
to inform the Senate that the House
has passed the following bills:

S. B. No. 441, A bill to be entitled
"An Act fixing the maximum fees
and excess fees that may be retained
by the county attorney of any county
having a population of as many as
25,000 and not more than 37,500, in
which county there is no city con-
taining over 25,000 inhabitants and
such county attorney performs the
duties of a district attorney pro-
vided by law to perform such duties;
and declaring an emergency."

With amendments.

S. B. No. 476, A bill to be entitled
"An Act changing the times of hold-
ing the terms of the district court in
the Sixty-ninth Judicial District of
Texas; enacting necessary provisions
in reference to process, writs, bonds,
recognizances and in reference to
grand and petit jurors, etc., and de-
claring an emergency."

H. B. No. 612, A bill to be entitled
"An Act to restore the jurisdiction of
the county court at Mason county,
and to repeal all laws in conflict
therewith, and declaring an emer-
gency."

Respectfully submitted,

M. LOUISE SNOW,

Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the
Senate.

Sir: I am directed by the House
to inform the Senate that the House
has passed the following bills:

S. B. No. 268, A bill to be entitled
"An Act to amend Section 21, Arti-
cle 8308 of the Revised Civil Stat-
utes of 1925 to provide for the
payment by the associations of judg-
ments in a court of law, or in a
court or admiralty and maritime
jurisdiction by which subscribers
who have complied with all the
rules, regulations and demands of
the association are required to pay
to any employee any damages, actual
or exemplary, on account of any
personal injury sustained by such
employee in the course of his em-
ployment during the period of sub-
scription, and declaring an emer-
gency."

S. B. No. 349, A bill to be entitled
"An Act to extend the time and keep
in force for a period of three years
from March 5, 1927, Oil and Gas
Permit No. 9369, on 156.3 acres of
the bed of San Jacinto River, Harris
County, Texas, upon the same terms
and conditions on which the origi-
nal permit was issued, and declaring
an emergency."

The House concurs in Senate
amendments to H. B. No. 636.

Respectfully submitted,

M. LOUISE SNOW.

Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the
Senate.

Sir: I am directed by the House
to inform the Senate that the House
has refused to concur in Senate
amendments to H. B. No. 109 and
request the Senate for the appoint-
ment of a Free Conference Commit-
tee to adjust the difference between
the two Houses. The following are
appointed conferees on the part of
the House:

Wallace of Freestone, Barron,
Storey, Teer, Rawlins.

Respectfully submitted,

M. LOUISE SNOW.

Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the
Senate.

Sir: I am directed by the House
to inform the Senate that the House
has passed the following bills:

S. B. No. 480, A bill to be entitled
"An Act to amend Article 2767,
Chapter 13, Title 49, of the Revised
Civil Statutes of the State of Texas
to 1925, so as to provide for abolish-
ments of independent school dis-
tricts, etc., and declaring an emer-
gency."

S. B. No. 404, A bill to be entitled
"An Act to amend Article 322 of the
Revised Civil Statutes for 1925, so
as to provide for the election of a
district attorney in certain judicial
districts providing for the election
of a criminal district attorney in cer-
tain counties, and declaring an emer-
gency."

Respectfully submitted,

M. LOUISE SNOW,

Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the
Senate.

Sir: I am directed by the House to inform the Senate that the House has refused to concur in Senate amendments to H. B. 455 and requests the Senate for the appointment of a Free Conference Committee to adjust the difference between the two Houses. The following are appointed as conferees on the part of the House:

Conway, Hornaday, Sutton, Ware, Alexander.

Respectfully submitted,

M. LOUISE SNOW,
Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the
Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bill:

H. B. No. 449, A bill to be entitled "An Act relating to the powers of the county board of trustees of the public schools of this State, authorizing them to reduce the area of common school districts containing one hundred and twenty-five square miles or more when such districts have no bonded indebtedness; to subdivide such districts; to revise or rearrange the boundaries of any such districts; to detach territory therefrom and add such detached portion to other adjoining common school districts or independent school districts which have heretofore been incorporated by general or special law, and repealing all laws in conflict therewith, and declaring an emergency."

Respectfully submitted,

M. LOUISE SNOW,
Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the
Senate.

Sir: I am directed by the House to inform the Senate that the House concurs in Senate amendments to H. J. R. No. 14.

S. B. No. 277, A bill to be entitled "An Act to provide for the approval by municipal authorities before filing, and for filing and recordation of plans, plats or replats of land lying in or within five miles of the corporate limits of cities having a popula-

tion of fifty thousand persons or over, according to the Federal Census of 1920, and of any subsequent Federal census, etc., and declaring an emergency."

H. C. R. No. 35, providing for bound copies of the Session Laws.

Respectfully submitted,

M. LOUISE SNOW,
Chief Clerk, House of Representatives.

Senate Concurrent Resolution No. 36.

Senator Moore sent up the following resolution:

Whereas, the House of Representatives on January 14, 1927, adopted H. C. R. No. 3 providing for compiling and printing Legislative Manual for the Fortieth Legislature, which said resolution was concurred in by the Senate on January 31, 1927; and

Whereas, the said resolution contained the following provision:

"The said bound volumes to be in the hands of the members of the Legislature within thirty days from the passage of this resolution, and same shall not be paid for unless copies are delivered within 40 days," and

Whereas, it was not practical to provide the State printer with the copy for said Legislative Manual in time for this provision to be complied with; now therefore be it

Resolved by the Senate, the House concurring, that said resolution be, and is hereby amended, by striking out said provision and inserting in lieu thereof the following:

"The said bound volumes to be in the hands of the members of the Legislature by May 12, 1927, and same shall not be paid for unless copies are delivered by May 22, 1927."

The resolution was read and adopted.

Senate Concurrent Resolution No. 37.

Senator Hardin sent up the following resolution:

Making an appropriation out of the contingent expense fund to pay the balance due of expenses of committee appointed under H. C. R. No. 6, passed at the First Called Session of the Thirty-ninth Legislature.

Be It Resolved by the Senate of the State of Texas, the House of Representatives concurring:

Section 1. That there is hereby appropriated out of the fund appropriated by Act of the Legislature for contingent expenses of the Legislature the sum of \$416.67 to pay expense of Legislative committee incurred over and above the amount appropriated and authorized for that purpose by H. C. R. No. 6, passed at the First Called Session of the Thirty-ninth Legislature.

By Miller, Stuart, Love, Bowers, Bailey, Russek, Berkley, Pollard, Price, Reid, Smith, Greer, Moore, Triplett, Floyd, Wood and Parr.

The resolution was read and adopted.

Senate Concurrent Resolution No. 88.

Senator Hall sent up the following resolution:

Whereas the commerce clause in the United States Constitution, reading: "Congress shall have power to regulate commerce . . . Among the several states . . ." has been construed by the Federal courts so as to confer upon the Federal Government power to regulate commerce by railroad within the several states; and

Whereas, Congress amended the Interstate Commerce Act so as to confer upon the Federal Government power to regulate commerce by railroad within the several states; and

Whereas, the effect has been to seriously cripple, if not wholly take away the powers theretofore exercised by the states over their internal commerce by railroad; and

Whereas, Senate Resolution No. 172, Sixty-ninth Congress, Second Session, introduced in the United States Senate on March 1, 1927, by Senator Mayfield, of Texas, proposes an amendment to said commerce clause in the Constitution, and has for its object the re-establishment of state authority, and the exclusion of Federal authority over the internal commerce by railroad aforesaid;

Now, therefore, Be It Resolved by the Senate of Texas, the House of Representatives concurring:

That said proposed amendment has our unqualified approval, and Texas calls upon its representatives at Washington to give the same full and hearty support; and

Be it further resolved that we do solemnly memorialize the Congress of the United States and the Legislatures of the several states, to support said amendment, and to join us in a declaration of closer adherence to the principles of State sovereignty and local self government; and

Be it further resolved, that we declare our continued adherence to the doctrine of the autonomy of the States, and to the principles that power not specifically granted to the Federal Government is reserved to the States; and

Be it further resolved, that we declare our continued adherence to the principle of local self government, and a strict construction of the Constitution; and

Be it further resolved, that we declare our unqualified opposition to further intrusion of the Federal power into the internal affairs of the States, and denounce the same as being repugnant to the teachings of the fathers.

HALL,
WOODWARD,
PRICE,

The resolution was read and adopted.

Senate Joint Resolution No. 34.

Senator Love called up the following resolution:

S. J. R. No. 34, A Senate Joint Resolution to amend the Constitution of the State of Texas to provide for the remission of ad valorem taxes under certain conditions.

The committee report was adopted

The resolution was read second time and passed to engrossment by the following vote:

Yeas—18.

Bledsoe.	Neal.
Berkeley.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Stuart.
Love.	Ward.
Lewis.	Witt.
Miller.	Wood.
Moore.	Woodward.

Nays—6.

Bowers.	Smith.
McFarlane.	Triplett.
Pollard.	Wirtz.

Absent.

Bailey.	Parr.
Hall.	Price.
Hardin.	Westbrook.
Holbrook.	

Senate Resolution No. 62.

Senator Greer called up from the table the following resolution:

S. R. No. 62, A resolution "providing for a Legislative Committee to make investigation in reference to free textbooks."

The resolution was read.

The resolution was lost by the following vote:

Yeas—9.

Bowers.	Real.
Greer.	Smith.
Love.	Ward.
Neal.	Witt.
Pollard.	

Nays—14.

Bailey.	Miller.
Berkeley.	Reid.
Bledsoe.	Russek.
Floyd.	Stuart.
Hall.	Wirtz.
Holbrook.	Wood.
Lewis.	Woodward.

Present—Not Voting.

Fairchild.

Absent.

Hardin.	Price.
McFarlane.	Triplett.
Moore.	Westbrook.
Parr.	

Free Conference Committee Appointed.

The Chair announced the appointment of the following as members of the Free Conference Committee on H. B. No. 109 on the part of the Senate:

Senators Wirtz, Fairchild, Stuart, Wood, Miller.

Senate Bill No. 441.

Senator Floyd called up the following bill:

S. B. No. 441, A bill to be entitled "An Act fixing the maximum fees and excess fees that may be retained by the county attorney of any county having a population of as many as 25,000 and not more than 37,500, in which county there is no city con-

taining over 25,000 inhabitants and such county attorney performs the duties of a district attorney provided by law to perform such duties; and declaring an emergency."

Senator Floyd moved that the Senate concur in the House amendments to the bill.

On motion of Senator Floyd, the bill was laid on the table subject to call.

Bills Signed.

The Chair gave notice of signing, and did sign, in the presence of the Senate, after their captions had been read, the following bills:

S. B. No. 409.	S. B. No. 349.
H. B. No. 536.	S. B. No. 404.
H. B. No. 507.	S. B. No. 480.
H. B. No. 506.	H. B. No. 626.
H. B. No. 505.	H. B. No. 605.
H. B. No. 503.	H. B. No. 607.
H. B. No. 501.	H. B. No. 572.
H. B. No. 502.	H. B. No. 564.
H. B. No. 500.	H. B. No. 509.
H. B. No. 485.	H. B. No. 508.
H. B. No. 487.	H. B. No. 451.
S. B. No. 476.	H. B. No. 16.
H. B. No. 588.	H. B. No. 13.
S. B. No. 268.	H. B. No. 8.

House Bill No. 497.

The Chair laid before the Senate the following bill:

H. B. No. 497, A bill to be entitled "An Act directing the State Board of Education to make an apportionment of funds according to scholastic census of certain school districts, providing the method of taking the census, making an appropriation therefor and declaring an emergency."

The bill passed finally by the following vote:

Yeas—24.

Bailey.	Pollard.
Berkeley.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Hall.	Smith.
Holbrook.	Stuart.
Lewis.	Triplett.
Love.	Ward.
McFarlane.	Westbrook.
Miller.	Wirtz.
Moore.	Witt.
Neal.	Woodward.

Nays—4.

Bledsoe. Greer.
Bowers. Wood.

Absent.

Hardin. Price.
Parr.

Free Conference Committee Report.

Senator Woodward sent up the Free Conference Committee report on H. B. No. 50.

Senator Wood moved that the report be printed in the Journal.

House Bill No. 352.

Senator Wood received unanimous consent to take up out of its regular order the following bill:

S. B. No. 352, A bill to be entitled "An Act making an emergency and supplemental appropriation out of the general revenues of this State for the maintenance and repair of the Governor's Mansion and Grounds, including repairs, improvements, labor and replacement, and for purchasing new furniture and furnishings for the balance of the fiscal year ending August 31, 1927, and declaring an emergency."

The bill was read second time, the committee report was adopted and the bill passed to third reading.

On motion of Senator Wood, the constitutional rule requiring bills to be read on three several days was suspended and H. B. 352 put on its third reading and final passage, by the following vote:

Yeas—29.

Bailey. Neal.
Berkeley. Pollard.
Bledsoe. Price.
Bowers. Real.
Fairchild. Reid.
Floyd. Russek.
Greer. Smith.
Hall. Stuart.
Hardin. Ward.
Holbrook. Westbrook.
Lewis. Wirtz.
Love. Witt.
McFarlane. Wood.
Miller. Woodward.
Moore.

Absent.

Parr. Triplett.

The bill was read third time and passed finally, by the following vote:

Yeas—29.

Bailey. Pollard.
Berkeley. Price.
Bledsoe. Real.
Bowers. Reid.
Fairchild. Russek.
Floyd. Smith.
Greer. Stuart.
Hall. Triplett.
Hardin. Ward.
Holbrook. Westbrook.
Lewis. Wirtz.
Love. Witt.
McFarlane. Wood.
Moore. Woodward.
Neal.

Absent.

Miller.

Parr.

Free Conference Committee Appointed.

The Chair announced the appointment of the following to be members, on the part of the Senate, of the Free Conference Committee on H. B. No. 455:

Senators Bailey, Moore, Lewis, McFarlane, Ward.

Recess.

On motion of Senator Stuart the Senate, at 12 o'clock, recessed until 2:30 o'clock p. m.

After Recess.

The Senate was called to order at 2:30 o'clock p. m. pursuant to recess by Lieutenant Governor Miller.

House Concurrent Resolution No. 35.

The Chair laid before the Senate H. C. R. No. 35, providing for bound copies of the Session Laws. The resolution was read and adopted.

Decisions Printed.

Senator Bailey received unanimous consent to have printed in the Journal two Supreme Court decisions: One, L. A. Nixon vs. C. C. Herndon and Charles Porras; the other, Ed Tumey vs. State of Ohio.

These decisions will be found in the Appendix.

Senate Resolution No. 62.

Senator Stuart moved to reconsider the vote by which the Senate refused to adopt Senate Resolution No. 62, and spread the motion on the Journal.

Messages from the House.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the
Senate.

Sir: I am directed by the House
to inform the Senate that the House
has passed the following bills:

S. B. No. 350, A bill to be entitled
"An Act to authorize the commis-
sioners' courts of the various coun-
ties of the State of Texas, to employ
one or more nurses for the purpose
of assisting in the promotion of pub-
lic health and visiting and inspect-
ing the pupils of the public schools
and to appropriate public funds in
payment thereof.

S. B. No. 271, A bill to be entitled
"An Act to authorize the establish-
ment of building lines on streets in
cities which now have, or may here-
after have, five thousand or more in-
habitants, and to provide the man-
ner in which damages may be de-
termined and paid and benefits as-
sessed and collected."

With amendments.

S. B. No. 438, A bill to be entitled
"An Act providing that no money or
benefits to be paid or rendered on a
weekly, monthly, or other periodic
or installment basis to the insured
or any beneficiary under any policy
of insurance issued by a life, health
or accident insurance company, in-
cluding mutual and fraternal an-
nuities and benefits in use by any
employer, shall be liable to execu-
tion, attachment, garnishment or
other process or operation of law to
pay any debt or liability of the in-
sured or any beneficiary, either be-
fore or after payment, except for
premiums on such policy or debts of
the insured secured by pledge
thereof, and providing that when-
ever such policy or plan shall pro-
vide against assignments or commu-
tations, assignments or commuta-
tions of a beneficiary in violation of
such provision shall be void, and de-
claring an emergency."

S. B. No. 80, A bill to be entitled
"An Act amending Article 416 of the
Revised Civil Statutes of 1925, relat-
ing to savings banks; authorizing the
investment of the saving deposits of
such banks in additional classes of
securities; enacting provisions better

regulating such investments, and de-
claring an emergency.

With amendments.

Respectfully submitted,

M. LOUISE SNOW,
Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the
Senate.

Sir: I am directed by the House
to inform the Senate that the House
concurs in Senate amendments to H.
B. No. 352.

The House adopts the report of
the Free Conference Committee on
H. B. No. 561 by vote of 93 yeas and
17 nays.

Respectfully submitted,

M. LOUISE SNOW,
Chief Clerk, House of Representatives.

House Bill No. 50.

The question recurred on Senator
Wood's motion to print the Free
Conference Committee Report on H.
B. No. 50.

Senator Holbrook moved as a sub-
stitute to reject the report and sub-
mit the bill to a new Free Conference
Committee.

Senator Wood withdrew his mo-
tion to print.

Senator Love moved the previous
question. The motion was lost by
the following vote:

Yeas—13.

Berkeley.	Reid.
Bledsoe.	Triplett.
Bowers.	Ward.
Floyd.	Westbrook.
Love.	Wood.
Neal.	Woodward.
Price.	

Nays—16.

Bailey.	Moore.
Fairchild.	Pollard.
Hall.	Real.
Hardin.	Russek.
Holbrook.	Smith.
Lewis.	Stuart.
McFarlane.	Wirtz.
Miller.	Witt.

Absent.

Greer.	Parr.
--------	-------

Senator McFarlane moved as a
substitute for Senator Holbrook's
motion that the report be printed in
the Journal. The motion was lost
by the following vote:

Yeas—14.

Bailey.	Lewis.
Bledsoe.	Love.
Bowers.	McFarlane.
Fairchild.	Neal.
Hall.	Russek.
Hardin.	Wirtz.
Holbrook.	Wood.

Nays—15.

Berkeley.	Smith.
Floyd.	Stuart.
Miller.	Triplett.
Moore.	Ward.
Pollard.	Westbrook.
Price.	Witt.
Real.	Woodward.
Reid.	

Absent.

Greer.	Parr.
--------	-------

Senator Stuart moved as a substitute for Senator Holbrook's motion that the committee report be adopted.

Senator Love moved the previous question on the report and the two motions. The motion was lost by the following vote.

Yeas—13.

Berkeley.	Real.
Bledsoe.	Reid.
Bowers.	Stuart.
Love.	Triplett.
Moore.	Wood.
Neal.	Woodward.
Price.	

Nays—16.

Bailey.	Miller.
Fairchild.	Pollard.
Floyd.	Russek.
Hall.	Smith.
Hardin.	Ward.
Holbrook.	Westbrook.
Lewis.	Wirtz.
McFarlane.	Witt.

Absent.

Greer.	Parr.
--------	-------

The motion to adopt the report prevailed by the following vote:

Yeas—18.

Berkeley.	Moore.
Bledsoe.	Neal.
Floyd.	Pollard.
Greer.	Price.
Hardin.	Real.
Miller.	Reid.

Stuart.	Witt.
Triplett.	Wood.
Ward.	Woodward.
Westbrook.	

Nays—8.

Bailey.	Holbrook.
Bowers.	Lewis.
Fairchild.	Love.
Hall.	Wirtz.

Absent.

McFarlane.	Russek.
Parr.	Smith.

Following is the report.

Conference Committee Report on
H. B. No. 50.

Committee Room.

Austin, Texas, March 12, 1927.

Hon. Barry Miller, President of the Senate; and Hon. Robert Lee Bobbitt, Speaker of the House of Representatives:

Sirs: We, your Conference Committee on H. B. No. 50, have had the same under consideration and have adjusted the difference between the House and Senate, and recommend the passage of the following bill:

By Beck. H. B. No. 50.

A. BILL

To Be Entitled

An Act to regulate motor propelled passenger vehicles not usually operated on or over rails and engaged regularly in the business of transporting passengers for compensation or hire over the public highways of the State; defining motor-bus companies and declaring them to be common carriers; excepting motor-bus companies operating wholly within an incorporated town or city and suburbs thereof; defining the terms "corporation," "person," "public highway," "highway Commission" and "Commission"; providing for the issuance of certificates of convenience and necessity, and of temporary certificates, to motor-bus companies and prescribing the terms and conditions under which such certificates shall be granted and issued, the factors which shall govern the "Commission" in granting same, (the period of time for which the same shall be granted) and the conditions under which they shall be held; requir-

ing the Railroad Commission of Texas to supervise and regulate the public service rendered by every motor-bus company, to fix or approve maximum and minimum fares, rates or charges, to prescribe all rules and regulations necessary for the government of motor-bus companies, to prescribe routes, schedules, service and safety of operations of motor-bus companies, to require filing of annual and other reports and data and do all things necessary to regulate all matters affecting the relationship between motor-bus companies and the traveling public, with due and proper consideration given to the Highway Laws of the State, orders, regulations, etc., of the Highway Commission, commissioners' courts and the local government of municipalities; prescribing requirements of application for certificates, notice and time of hearing; requiring motor-bus companies to procure and keep in force liability and property damage insurance and prescribing the terms and conditions of such policies, providing for revocation of certificates for failure to comply; providing for enforcement of such liability in regard thereto; requiring operators of motor-bus companies to protect their employees by a workman's compensation insurance; providing for the sale or transfer of any right, privilege, permit or certificate by any motor-bus company with the approval of the Commission; providing for the investigation and determination of complaints; authorizing the Commission or any member thereof or authorized representative to compel the attendance of witnesses, swear witnesses, take their testimony under oath; giving full power and authority to the Commission to perform all necessary things to carry out the purpose, intent and provisions of this Act; providing for service upon attendance and fees of witnesses and officers; fixing penalty for violation of the law and the rules and regulations of the Commission; providing for the suspension, revocation, alteration or amendments of permits and or certificates; providing for fees to be charged for the purpose of de-

fraying the expenses of regulation, the collection and deposit of all such fees, together with all fines recovered by the State Treasurer, method of disbursement, and making appropriation of such sums so collected; providing for the employment by the Commission of all experts, assistants and other help necessary to enable it at all times to properly administer and enforce this Act and to fix the compensation of such employees; making appropriation for initial expenses; providing for any deficiency and for transfer of surplus to the general revenue; providing for appeal from any action of the Commission; directing Board of Control to set aside necessary additional office space; providing that if any portion of this Act should be held unconstitutional the remainder shall not be invalid; repealing all laws and parts of laws in conflict herewith and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. (a) That the term "Corporation" when used in this Act means a corporation, company, association or joint stock association.

(b) The term "person" when used in this Act means an individual, firm or co-partnership.

(c) The term "motor-bus company" when used in this Act means every corporation or person as herein defined, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any motor propelled passenger vehicle, not usually operated on or over rails, and engaged regularly in the business of transporting persons as passengers for compensation or hire over the public highways between points within the State of Texas, whether operating over fixed routes or otherwise, and provided further, that the term "motor-bus company" as used in this Act shall not include corporations or persons, their lessees, trustees, or receivers, or trustees appointed by any court whatsoever, insofar as they own, control, operate, or manage motor propelled passenger vehicles operated wholly within the limits of any incorporated town or city and the

suburbs thereof, whether separately incorporated or otherwise.

(d) The term "public highway" when used in this Act means every street, road, or highway in this State.

(e) The term "Highway Commission" when used in this Act means the Board of Highway Commissioners of the State of Texas.

(f) The term "Commission" when used in this Act means the Railroad Commission of the State of Texas.

Sec. 2. All motor-bus companies, as defined herein, are hereby declared to be "common carriers" and subject to regulation by the State of Texas, and shall not operate any motor propelled passenger vehicle for the regular transportation of persons as passengers for compensation or hire over any public highway in this State except in accordance with the provisions of this Act, provided, however, that nothing in this Act or any provision thereof shall be construed or held to in any manner affect, limit, or deprive cities and towns from exercising any of the powers granted them by Chapter 147, pages 307 to 318 inclusive, of the General Laws of the State of Texas, passed by the Thirty-third Legislature, or any amendments thereto.

Sec. 3. It is hereby declared that when existing transportation facilities on any highway in this State do not provide passenger service which the Commission shall deem adequate to provide for public convenience on such highway, then such inadequacy of service shall be considered as creating a condition wherein the public convenience and necessity require the designation of, and provision for, additional service on such highway, and it shall be the duty of the Commission to issue certificate or certificates as herein provided, if in the opinion of said Commission the issuance of such certificate will promote the public welfare.

Sec. 4. The Commission is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate the public service rendered by every motor-bus company operating over the public highways in this State, to fix or approve the maximum or minimum, or

maximum and minimum, fares, rates or charges of, and to prescribe all rules and regulations necessary for the government of, each motor-bus company; to prescribe the routes, schedules, service, and safety of operations of each motor-bus company, to require the filing of such annual and other reports and of other data by such motor-bus company as the Commission may deem necessary; and to supervise and regulate motor-bus companies in all other matters affecting the relationship between such motor-bus companies and the traveling public, whether herein specifically mentioned or not.

The Commission, in prescribing and adopting routes and dealing with all other matters affecting the physical operation and control of motor-bus companies over the public highways, under power and authority of this Act, shall give due and proper consideration, in forming its conclusions and prescribing its orders and regulations, to the general highways laws of this State and to the orders, regulations, ordinances, or recommendations of the Highway Commission of Texas, or the commissioners' courts of any county or counties or the local government of any municipality through or between which the routes for such motor-bus companies are prescribed and adopted.

Sec. 5. No motor-bus company shall hereafter regularly operate for the transportation of persons as passengers for compensation or hire over the public highways of this State without first having obtained from the Commission under the provisions of this Act a certificate or permit declaring that the public convenience and necessity require such operation; provided, however, that when it appears to the satisfaction of the Commission that any motor-bus company making application for a certificate or permit is operating and has been continuously operating a motor-propelled passenger vehicle service in good faith, over the particular highways designated in said application for certification or permit, for a period commencing January 11, 1927, or prior thereto, said motor-bus company, shall upon application be granted a temporary permit to operate just as said com-

pany shall have been operating during said period and no more; said temporary certificate or permit shall become permanent without notice and hearing before the Commission unless a protest shall be filed with the Commission as provided herein; and in the event protest is filed to the application of such motor-bus company then said temporary certificate or permit shall continue in effect until said application and protest is heard and decided upon by the Commission, and said hearing and decision shall be had and rendered by the Commission as speedily as possible.

At any time within thirty days after the day this Act shall take effect anyone affected by the granting of said certificate or permit may file with the Commission a protest against said certificate or permit becoming or being made permanent, but such protest to be considered by the Commission must be filed within the specified thirty days and shall be in writing, and the author or authors of said protest shall supply the applying motor-bus company with a copy of same, setting forth in reasonable detail the reasons for said protest. In the event of protest to any application of any existing motor-bus company, hearing upon such application and protest shall be had and decision rendered as provided for all other applications.

In all other matters the holders of temporary or permanent certificates or permits obtained in this manner shall be subject to all of the provisions of this Act.

Any right, privilege, permit, or certificate held, owned or obtained by any motor-bus company under the provisions of this Act may be sold, assigned, leased or transferred, or inherited; provided, however, that any proposed sale, assignment, lease of transfer shall be first presented in writing to the Commission for its approval or disapproval and the Commission may disapprove such proposed sale, assignment, lease, or transfer if it be found and determined by the Commission that such proposed sale, assignment, lease or transfer is not made in good faith or that the proposed purchaser, assignee, lessee or transferee is not able or capable of continuing the operation of the equipment proposed

to be sold, assigned, leased or transferred, in such manner as to render the service demanded by the public necessity and convenience on and along the designated route.

Provided, however, that any right, privilege, permit or certificate held, owned or obtained by any motor-bus company under the provisions of this Act or owned or obtained by any assignee or transferee of any such motor-bus company shall be taken and held subject to the right of the State at any time to limit, restrict or forbid the use of the streets and highways of this State to any owner or holder of such right, privilege, permit or certificate.

Sec. 6. The Commission is hereby vested with power and authority, and it is hereby made its duty upon the filing of an application for a certificate of public convenience and necessity, to ascertain and determine under such rules and regulations as it may promulgate, after considering existing transportation facilities on such highway, the service rendered and capable of being rendered thereby, and the demand for, or need of additional service, if there exists a public necessity for such service, and if public convenience will be promoted by granting said application and permitting the operating of motor vehicles on the highways designated in such application, as a common carrier for hire.

Sec. 7. The Commission shall also ascertain and determine if a particular highway or highways designated in said application are of such type of construction or in such state of repair, or subject to such use as to permit of the use sought to be made by the applicant, without unreasonable interference with the use of such highway or highways by the general public for highway purposes. And if the Commission shall determine, after hearing, that the service rendered or capable of being rendered by existing transportation facilities or agencies on such highways is reasonably adequate, or that public convenience on such highways would not be promoted by granting of said application and the operation of motor vehicles on the public highways therein designated, or that such highway or highways are not in such state of repair, or are already subject to such use as would not

permit of the use sought to be made by the applicant without unreasonable interference with the use of such highway or highways by the general public for highway purposes, then in either or any of such events said application may be denied and said certificate refused, otherwise the application should be granted and the certificate issued upon such terms and conditions as said Commission may impose and subject to such rules and regulations as it may thereafter prescribe.

The railroad commission shall have no power in any event to refuse an application for a certificate of convenience and necessity on the ground that there are existing railroad transportation facilities sufficient to serve the transportation needs of the territory involved.

In determining whether or not a certificate should be issued, the Commission shall give weight and due regard to (1) probable permanence and quality of the service offered by the applicant, (2) the financial ability and responsibility of the applicant and its organization and personnel (3) the character of vehicles and the character and location of depots or termini proposed to be used, and (4) the experience of the applicant in the transportation of passengers and the character of the bond or insurance proposed to be given to insure the protection of its passengers and the public.

The Commission shall have the power and authority to grant temporary certificates to meet emergencies and shall have the power to make special rules and regulations to meet special conditions in different localities and for such time as in its judgment may be deemed expedient and best for the public welfare.

Sec. 8. No application for certificate shall be considered by said Commission except that it be reduced to writing and set forth the following facts:

(a) It shall contain the name and address of the applicant, and the names and addresses of its officers, if any, and shall give full information concerning the financial condition and physical properties of the applicant.

(b) The complete route or routes over which the applicant desires to

operate, together with a brief description of each vehicle which the applicant intends to use, including the seating capacity thereof.

(c) A proposed time schedule and a schedule of rates showing the passenger fares to be charged between the several points or localities to be served.

(d) It shall be accompanied by a plat or map showing the route or routes over which the applicant desires to operate, on which plat or map shall be delineated the line or lines of any existing transportation company or companies over the highways serving such territory, with the names and addresses of the owner or owners thereof, and shall point out the inadequacy of existing transportation facilities or service, and shall specify wherein additional facilities or service are required and would be secured by the granting of said application.

Sec. 9. Upon the filing of said application the Commission shall fix a time and place for hearing, and the place of hearing shall be the city of Austin, Texas, unless otherwise ordered by said Commission. Notice of the filing of said application, and the time and place of hearing shall be given by mail not less than ten days exclusive of the day of mailing before such hearing, addressed to the owner or owners of existing transportation facilities over the highways, serving such territory as applicant seeks to serve, as well as to the Highway Commission of the State of Texas, the county judge or judges of the counties and to the mayor of any incorporated city or town, through which such motor carriers seek to operate.

Sec. 10. The hearing shall be conducted under such rules and regulations as the Commission may prescribe, and all parties interested, including the Highway Commission of this State, may appear either in person or by counsel, and present such evidence and argument as they may desire and as the Commission may deem pertinent, in favor of or against the granting of said application. It shall be the duty of the Highway Commission of this State, upon the request of the Commission to furnish any and all information that it has at its command relating to the highway or highways desig-

nated in such application, as well as such other information as said Commission may deem pertinent to the granting or refusal of such application. After such hearing, and such investigation as the Commission may make of its own motion, it shall be the duty of said Commission to either refuse said application and certificate, or to grant said application and issue said certificate, in whole or in part, upon such terms and conditions as it may impose, and subject to such rules and regulations as it may thereafter prescribe.

The Commission at any time by its order duly entered after hearing had upon notice to the holder of any certificate granted under this Act and an opportunity given such holder to be heard, at which hearing it shall be proven to the satisfaction of the Commission that such certificate holder has discontinued operation or has violated or refused or neglected to observe any of its proper orders, rates, fares, rules, or regulations, may suspend, revoke, alter or amend any certificate issued under the provisions of this Act, provided that the holder of such certificate shall have the right of appeal as provided herein.

Sec. 11. The Commission shall, in the granting of any certificate to any motor-bus company for regularly transporting persons as passengers for compensation or hire, require the owner or operator to first procure liability and property damage insurance from a company licensed to make and issue such insurance policy in the State of Texas covering each and every motor propelled vehicle while actually being operated by such applicant. The amount of such policy or policies of insurance shall be fixed by the Commission by general order or otherwise, and the terms and conditions of said policy or policies covering said motor vehicles are to be such as to indemnify the applicant against loss by reason of any personal injury to any person or loss or damage to the property of any person other than the assured and his employees. Such policy or policies shall furthermore provide that the insurer will pay all judgments which may be recovered against the insured motor-bus company based on claims for loss or damage from personal injury or

loss of or injury to property occurring during the term of the said policy or policies and arising out of the actual operation of such motor-bus or busses, and such policy or policies shall also provide for successive recoveries to the complete exhaustion of the face amount thereof, and that such judgments will be paid by the insurer irrespective of the solvency or insolvency of the insured. Such liability and property damage insurance as required by the Commission shall be continuously maintained in force on each and every motor propelled vehicle while being operated in common carrier service. In addition to the insurance hereinabove set forth, the owner or operator shall also protect his employees by taking out workmen's compensation insurance either as provided by the Workmen's Compensation Laws of the State of Texas or in a reliable insurance company approved by the Railroad Commission of the State of Texas. The taking out of such indemnity policy or policies shall be a condition precedent to any operation and such policy or policies as required under this Act, shall be approved and filed with the Commission and failure to file and keep such policy or policies in force and effect as provided herein shall be cause for the revocation of the certificate and shall subject the motor bus company so failing to the penalties prescribed herein.

Sec. 12. The Commission shall have the power and authority under this Act to hear and determine all applications of motor-bus companies to determine complaints presented to it by motor-bus companies, by any public official or by any citizen having an interest in the subject matter of the complaint, or it may institute and investigate any matter pertaining to automobile passenger transportation for compensation or hire upon its own motion. The Commission or any member thereof, or authorized representative of the Commission, shall have the power to compel the attendance of witnesses, swear witnesses, take their testimony under oath, make record thereof, and if such record is made under the direction of a Commissioner, or authorized representative of the Commission a majority of the Commission may upon the record render judg-

ment as if the case had been heard before a majority of the members of the Commission. The Commission shall have the power and authority under this Act to do and perform all necessary things to carry out the purpose, intent, and provisions of this Act, whether herein specifically mentioned or not, and to that end may hold hearings at any place in Texas which it may designate.

Sec. 13. Each witness who shall be summoned to appear before the Commission or a Commissioner or authorized representative outside the county of his residence shall receive for his attendance the same per diem and fees as now provided for witnesses in attendance on district courts of this State in criminal cases, such fees and mileage shall be ordered paid upon proper voucher, sworn to by such witness and approved by the Commission or the Chairman thereof, out of the monies and funds arising under this Act; provided that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any motor-bus or other transportation company involved in or concerning which the investigation or hearing on account of which he is called shall relate, and no witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation. All process issued by the Commission for summoning witnesses or other purposes shall be directed to the sheriff or any constable of any county in the State of Texas and any sheriff or constable of any county in this State shall promptly execute any subpoena or other document directed to him by the Commission and shall receive such fees for this service as is now paid for like services in the district courts of this State, such payment to be made on accounts properly verified and approved by the Commission or the Chairman thereof out of the fund provided in this Act.

Sec. 14. Every officer, agent, or employee of any corporation and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this Act or fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand, or require-

ment of the Commission shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding five hundred (\$500.00) dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Each day any provision of this Act or any rule, regulation, order, etc., of the Commission is violated shall constitute a separate offense, and the fact that the Commission may have caused prosecution for violation of its rules, regulations, etc., under the penal section of this Act shall not operate to prevent or limit the exercise of the authority of the Commission to suspend, revoke, alter or amend permits or certificates as provided in Section 10 of this Act.

Sec. 15. For the purpose of defraying the expense of administering this Act, every motor-bus company now regularly operating, or which shall hereafter regularly operate in this State, shall, in addition to other fees and charges provided for by law, at the time of the issuance of a certificate of convenience and necessity, as provided herein, and annually thereafter on or between September 1 and September 15 of each calendar year, pay a special minimum fee of ten dollars (10.00) for each motor propelled vehicle, and a further fee computed on the basis of fifty (50) cents per passenger seat for the rated capacity of the vehicle or vehicles used.

If the certificate of convenience and necessity herein referred to is issued after the month of September of any year, the fees paid shall be proportionate to the remaining portion of the year ending August 31 following, but in no case less than one-fourth the annual fee. In case of emergencies or unusual temporary demands for transportation the fee for additional motor propelled vehicles for less periods shall be fixed by the Commission in such reasonable amounts as may be prescribed by general rule or temporary order.

All fees accruing hereunder and all fines collected under the provisions of this Act shall be payable to the State Treasurer at Austin, Texas, and shall, by the State Treasurer, be deposited in the State Treasury at Austin and credited to the fund to

be known and designated as the "Motor Transportation Fund" and out of which all warrants for expenditures necessary in administering and enforcing this Act shall be paid.

Sec. 16. The Commission shall have power to employ and appoint from time to time such experts, assistants, and other help, in addition to its present force, as may be deemed necessary to enable it at all times to properly administer and enforce this Act. Such persons and employees of the Commission shall be paid for the services rendered such sums as may be fixed and prescribed by the Commission in monthly installments, and such salaries, wages and all fees that may be paid to witnesses and officers shall be paid out of the motor transportation fund by the State Treasurer on warrant of the Comptroller of Public Accounts on order or voucher approved by the Commission or the Chairman thereof. All actual and necessary traveling expenses of the members of the Commission and employees shall also be paid out of said motor transportation fund in the same manner as salaries, wages, and fees when such accounts shall have been itemized and sworn to by the Commission or employee incurring the expense and approved by the Commission or the Chairman thereof.

If the amount or total of such gross receipts collected under the provisions of this Act shall not be sufficient during any annual period to pay such salaries, costs, charges, fees, and expenses, then the deficit shall be paid by the State Treasurer out of any funds not otherwise appropriated. Until sufficient funds have accrued to said motor transportation fund for the payment of expenses, fees, etc., as provided herein, said expenses shall be paid by the State Treasurer out of any funds not otherwise appropriated, such sum to be paid out of the general revenue not to exceed the sum of five thousand dollars (\$5,000.00), and said sum is hereby appropriated. Any surplus remaining in the motor transportation fund at the end of any fiscal year, after paying all such salaries, accounts, fees, and charges and after deducting such amount as may be contracted to be paid and incurred and such sum as may be reasonably

estimated by the Commission for its use pending further collection of fees shall be paid over to the general revenue fund.

Sec. 17. If such auto transportation company, association, corporation, or other party at interest be dissatisfied with any decision, rate, charge, rule, order, act, or regulation adopted by the Commission, such dissatisfied person, association, corporation, or party may file a petition setting forth the particular objection to such decision, rate, charge, rule, order, act, or regulation, or to either or all of them in the district court in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in said court; either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of different character therein pending; provided, that if the court be in session at the time such right of action accrues the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this section the burden of proof shall rest upon the plaintiff who must show by the preponderance of evidence that the decisions, rates, regulations, rules, orders, classifications, acts, or charges complained of are unreasonable and unjust to it or them. The Commission shall not be required to give any appeal bond in any cause arising hereunder and no injunction shall be granted against any order of the Commission without hearing unless it shall clearly appear that irreparable injury will be done the complaining party if the injunction is not granted.

Sec. 18. Whenever notice is required in this Act to be given ten days exclusive of the days of service and return shall be considered as reasonable notice; provided that in case of emergency the Commission may hear any cause or complaint on less than ten days notice.

Sec. 19. The State Board of Control is hereby authorized and di-

rected to set aside such additional office space in the Capitol at Austin as may be deemed necessary by the Commission for the proper performance of its added duties as herein defined.

Sec. 20. All laws and parts of laws in conflict herewith are hereby expressly repealed.

Sec. 21. If any section, subsection, sentence, clause, or phrase of this Act is held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Act.

Sec. 22. The fact that there is at this time a large number of individuals, firms, and corporations using the highways of this State for the transportation of persons as passengers for hire, by motor propelled passenger vehicles, and the further fact that there is no law regulating this extensive branch of common carrier service, and no law to protect the public in its dealings with such common carrier creates a public necessity requiring the suspension of the constitutional rule which requires all bills to be read in each House on three several days, and that such rule be and the same is hereby suspended, and that this Act shall take effect from and after its passage, and it is so enacted.

BECK,
CUMMINGS,
MCCOMBS,
MORSE,
MINOR,

On the part of the House.

STUART,
REAL,
MOORE,
WOODWARD,

On the part of the Senate.

House Bill No. 433.

Senator Wood received unanimous consent to take up, out of its order, the following bill:

H. B. No. 433, A bill to be entitled "An Act appropriating the sum of \$36,000.00, or so much thereof, as may be necessary for the compensation and expenses of the commissioners appointed by the Supreme Court of the United States under decree of January 3, 1927, in Cause No. 6 Original October Term, 1926, styled The State of Oklahoma, Complainant, vs. The State of Texas, Defendant; the United States of Amer-

ica, Intervener, to run the boundary line between the State of Texas and the State of Oklahoma, and declaring an emergency."

The bill was read second time.

The committee report was adopted and the bill passed to third reading.

On motion of Senator Wood, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 433 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

Senate Bill No. 271.

Senator Hall moved that the Senate concur in the House Amendments to S. B. No. 271. The motion was adopted.

House Bill No. 365.

Senator Price received unanimous consent to take up, out of its regular order, the following bill:

H. B. No. 365, A bill to be entitled "An Act to amend Article 4192 of the Revised Civil Statutes of 1925, providing for the making of oil and gas and other mineral leases by guardians of the estate of minors, and other persons, upon the real estate belonging to the estate of their wards, and declaring an emergency."

The bill was read second time, the committee report was adopted, and the bill passed to third reading.

On motion of Senator Price, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 365 put on its third reading and final passage, by the following vote:

Yeas—27.

Bailey.	Moore.
Berkeley.	Neal.
Bledsoe.	Pollard.
Bowers.	Price.
Fairchild.	Real.
Floyd.	Reid.
Greer.	Russek.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Wirtz.
Love.	Wood.
McFarlane.	Woodward.
Miller.	

Absent.

Parr.	Westbrook.
Smith.	Witt.

The bill was read third time and passed finally, by the following vote:

Yeas—26.

Bailey.	Miller.
Berkeley.	Moore.
Bledsoe.	Neal.
Bowers.	Pollard.
Fairchild.	Price.
Floyd.	Real.
Greer.	Reid.
Hall.	Russek.
Hardin.	Stuart.
Holbrook.	Triplett.
Lewis.	Ward.
Love.	Wirtz.
McFarlane.	Wood.

Absent.

Parr.	Witt.
Smith.	Woodward.
Westbrook.	

Bills Signed.

The Chair gave notice of signing, and did sign, in the presence of the Senate, after their captions had been read, the following bills:

S. B. No. 350.	H. B. No. 525.
S. B. No. 438.	H. B. No. 563.
S. B. No. 271.	H. B. No. 426.
S. B. No. 277.	H. B. No. 580.
H. B. No. 488.	H. B. No. 212.
H. B. No. 475.	H. B. No. 653.
H. B. No. 497.	H. B. No. 366.

House Bill No. 387.

Senator Fairchild received unanimous consent to take up, out of its regular order, the following bill:

H. B. No. 387, A bill to be entitled "An Act to amend Section Two, Article 6479, Chapter 11, Title No. 112 of the 1925 Revised Civil Statutes of Texas, relating to operation of Passenger Trains on Railroads in Texas."

The bill was read second time, the committee report adopted, and the bill passed to third reading.

House Bill No. 644.

Senator Bailey received unanimous consent to take up out of its regular order the following bill:

H. B. No. 644. A bill to be entitled "An Act to ratify, approve, confirm and declare enforceable all levies and assessments and ad valorem taxes heretofore made by the governing body of the town of Pleasanton, in Atascosa County, Texas, which are unenforceable because same were made or adopted by resolution, motion or other informal action of order instead of by ordinance, and of all assessments of taxes or assessments of property within the limits of said town for taxation which are insufficient because of technical irregularities in the manner of preparing the books and reports thereof, and of all equalizations of such property for taxation purposes by boards of equalization acting for said town or its council which are insufficient because such equalization or reports thereof were made orally or in incomplete form, and declaring an emergency."

The bill was read second time, the committee report was adopted, and the bill passed to third reading.

On motion of Senator Bailey, the

constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 644 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally, by the following vote:

Yeas—28.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Stuart.
Hall.	Triplett.
Hardin.	Ward.
Holbrook.	Westbrook.
Lewis.	Wirtz.
Love.	Witt.
McFarlane.	Wood.
Miller.	Woodward.

Absent.

Moore. Smith.

Parr.

House Bill No. 522.

Senator Hall received unanimous consent to take up out of its regular order the following bill:

H. B. No. 522, A bill to be entitled "An Act repealing the Special Act of the Thirty-eighth Legislature of the State of Texas, known as Chapter 7, House Bill No. 105, creating and incorporating Webster Independent School District in Harris County, Texas, out of the territory composing Common School Districts Nos. 19 and 13, of said county, providing that the title of the school property vested

in said Common School District Nos. 19 and 13, shall vest in said Webster Independent School District, and that said independent school district assume the debts of said Common School District Nos. 19 and 13; providing for the Board of Trustees of said Webster Independent School District; providing for the time and manner of their election; defining their power and duties, and declaring an emergency."

The bill was read second time, committee report adopted, and passed to third reading.

On motion of Senator Hall, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 522 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally, by the following vote:

Yeas—28.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Wirtz.
Love.	Witt.
McFarlane.	Wood.
Miller.	Woodward.

Absent.

Moore. Westbrook.

Parr.

House Bill No. 161.

The Chair laid before the Senate on third reading the following bill:

H. B. No. 161, A bill to be entitled "An Act amending Article 879 of Chapter 6 of Title 13 of the Revised Criminal Statutes of Texas of 1925, which article provides for the regulation of the seasons in which wild game may be hunted and killed, and the seasons in which it is lawful to hunt and kill such wild game, including doves, quail, pheasant, turkey, rail, plover, ducks, prairie chickens, deer, bear and fox; and which amendment provides for seasons in which it shall be lawful to hunt and kill the wild game named and in which the season for hunting and killing such wild game shall be closed; and providing for the addition at the end of said article to the proviso that there shall be no closed season for the hunting and killing of squirrels and that it shall be lawful to hunt and kill the wild red or fox squirrels and the wild gray squirrels, the Counties of Gonzales, Austin."

The bill was read.

Amendment to H. B. No. 161.

Senator Wood sent up the following amendment:

Amend H. B. No. 161, as amended, by adding to the caption and to Article 879b, the following:

"Jackson, Wharton, Victoria, Edwards, Lampasas, Freestone."

The amendment was adopted.

The bill as amended was passed finally.

Senate Bill No. 380.

On motion of Senator Witt, the Senate voted to concur in the House amendments to S. B. No. 380.

Following are the amendments:

Amendment No. 1, S. B. No. 380.

Amend S. B. No. 380 by inserting the following after the word "thereon" on page 2, line 28, paragraph 5, and in addition thereto in assignable certificates issued by any city, town or village for street paving, the payments of which are secured by first liens fixed on abutting properties by assessments levied in accordance with law and thereby made the personal obligations of the abutting property owners.

Amendment No. 2, S. B. No. 380.

Amend S. B. No. 380 by inserting the word "permanent", between the words "for" and "improvements" in lines 34 and 35, page 1, Section 2.

Amendment No. 3, S. B. No. 380.

Amend S. B. No. 380, page 2, Section 5 by striking out all after semi-colon, line 23, to semi-colon line 26.

Amendment No. 4, S. B. No. 380.

Amend S. B. No. 380 by striking out all of lines 33 and 34 and all of line 35 to the semi-colon and insert in lieu thereof the following: "2. In bonds, interest bearing notes; or other obligations issued under the authority of law in payment for permanent improvement made.

The amendments were read and adopted.

House Bill No. 470.

The Chair laid before the Senate on third reading the following bill:

H. B. No. 470, A bill to be entitled "An Act amending Article 2686 of the Revised Civil Statutes of Texas by providing that appeals from the decision of the county superintendent of public instruction shall lie to the county school trustees, and from the county school trustees, to the court having proper jurisdiction of the subject matter, where a trial De Novo shall be had. All laws and parts of laws in conflict herewith are hereby repealed.

The bill was passed finally.

House Bill No. 609.

The Chair laid before the Senate on third reading the following bill:

H. B. No. 609, A bill to be entitled "An Act to authorize the State Highway Commission to employ a chief auditor of accounts and expenditures, three engineer accountants or inspectors, and two equipment inspectors, fix their compensation and pay for the same out of the State Highway Fund.

The bill passed finally by the following vote:

Yeas—26.

Bailey.	Fairchild.
Berkeley.	Floyd.
Bledsoe.	Greer.
Bowers.	Hall.

Hardin.	Real.
Holbrook.	Reid.
Lewis.	Russek.
Love.	Smith.
McFarlane.	Triplett.
Miller.	Wirtz.
Neal.	Witt.
Pollard.	Wood.
Price.	Woodward.

Absent.

Moore.	Ward.
Parr.	Westbrook.
Stuart.	

House Bill No. 223.

The Chair laid before the Senate on second reading the following bill:

H. B. No. 223, A bill to be entitled "An Act to amend Article 4351, Revised Civil Statutes, 1925, by adding thereto Article 4351A, limiting the amount of deficiency warrants the Governor may approve, declaring all warrants in violation hereof invalid and unredeemable, and declaring an emergency."

The bill was read second time, committee report adopted, and passed to third reading.

On motion of Senator Wirtz, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 223 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally.

House Bill No. 411.

The Chair laid before the Senate on second reading the following bill:

H. B. No. 411, A bill to be entitled "An Act to create a more efficient road system for San Saba County, Texas, and making the commissioners of said county ex-officio road commissioners in their respective precincts and prescribing their duties as such; and providing for the compensation of road commissioners; defining the duties of the commissioners' court with reference to the roads and bridges; providing for the appointment of overseers and defining their duties, and providing for compensation for certain labors, providing penalties for violation of the provisions of this Act; giving persons subject to road duty in San Saba County and persons summoned to work on the public roads of said county, the right to be relieved from the discharge of such duty upon the payment of specific sums of money herein stipulated; and providing for the accounting for and the disposition to be made of the money so paid; limiting the purpose for which road and bridge funds shall be used; authorizing and providing for the working of county convicts upon the public roads, and providing for the payment of officers' fees; providing that delinquent poll tax payers shall be subject to three days duty; requiring the tax collector of San Saba County to furnish to the commissioners' court a list of all persons who fail to pay their poll tax; providing for the condemnation of any land needed for the widening of public roads; providing for the taking of timber, gravel, earth, stone or other material for the making or improving of public roads and bridges, requiring certain road and bridge work to be done by contract; authorizing and empowering the said San Saba County to issue bonds for the construction and maintenance of public roads and bridges within said county, and provide for a tax to create a sinking fund to pay the same; providing that this Act shall control in San Saba County in all cases wherein it differs from or is inconsistent and conflicts with the General Law on the subject of roads and bridges, and declaring an emergency."

The bill was read second time, the committee report was adopted, and passed to third reading.

On motion of Senator Wood, the

constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 411 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

House Bill No. 452.

The Chair laid before the Senate on second reading the following bill:

S. B. No. 452, A bill to be entitled "An Act to amend Chapter 93 of the Acts of the Thirty-fifth Legislature as amended and approved by the Governor, March 18, 1918, and being an "An Act restoring jurisdiction on the County Court of El Paso County, and making same concurrent with the County Court at Law of El Paso County," prescribing and fixing jurisdiction of the County Court of El Paso County, Texas; prescribing

and fixing the jurisdiction of the County Court at Law of El Paso County, Texas; fixing the salary of the judges of the El Paso County Court of El Paso County and of the El Paso County Court at Law; providing for the election of the judge of the El Paso County Court at Law; providing for the appointment of special judges; fixing and prescribing the jurisdiction of the County Court of El Paso County, Texas, and investing the County Court at Law of El Paso County, Texas, with all jurisdiction of civil and criminal cases, original and appellate over which, by the General Laws of the State of Texas the county court has jurisdiction; providing for the appointment of an official shorthand reporter of the El Paso County Court at Law, and providing for the compensation thereof, and fixing the salary of the judge of the County Court of El Paso County; providing and authorizing the appointment of an official shorthand reporter for the County Clerk of El Paso County, Texas, and fixing the compensation thereof, and authorizing the county judge of El Paso County, Texas, to appoint such official shorthand reporter and declaring an emergency."

The bill was read second time, the committee report was adopted, and passed to third reading.

On motion of Senator Berkeley, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 452 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

House Bill No. 638.

The Chair laid before the Senate on second reading the following bill:

H. B. No. 638, A bill to be entitled "An Act to authorize the transfer of civil cases in Lamar County from the docket of the Sixth Judicial District to the docket of the Sixty-second Judicial District and from the Sixty-second Judicial District to the Sixth Judicial District at the close of each term, during term time or in vacation, and declaring an emergency."

The bill was read second time, the committee report was adopted, and passed to third reading.

On motion of Senator Floyd, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 638 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

House Bill No. 12.

The Chair laid before the Senate on second reading the following bill:

S. B. No. 12, A bill to be entitled "An Act to authorize every person, firm, corporation, limited partnership, joint stock association or other association operating, or constructing aerial or other kind of tramways between mines and railways and smelters to acquire rights-of-way by condemnation, declaring same to be common carriers, placing them under the jurisdiction of the Railroad Commission, and declaring an emergency."

The bill was read second time, the committee report was adopted, and passed to third reading.

On motion of Senator Berkeley, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 12 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Moore.	Wood.
Miller.	Woodward.

Absent.
Parr.
 The bill was read third time and passed finally, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

House Bill No. 630.

The Chair laid before the Senate the following bill:

H. B. No. 630, A bill to be entitled "An Act creating the County Court at Law of Hidalgo County, Texas; fixing and defining the jurisdiction and terms thereof; prescribing the qualifications, manner of appointment and election, term of office, compensation and powers of the regular or special judge thereof; providing for the filling of vacancies of the office of judge thereof and for a clerk and bailiff and seal therefor; defining the powers of such seal; fixing the fees of the clerk thereof and of officers executing processes issued therefrom; declaring that the jurisdiction of the County Court of Hidalgo County shall not be hereby effected; providing for transfer of cases between the said county court; declaring the validity in transferred cases of processes extant at the time of such transfer; prescribing the practice in said court, and declaring an emergency."

The bill was read second time, the committee report was adopted, and passed to third reading.

On motion of Senator Parr, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 630 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

House Bill No. 228.

The Chair laid before the Senate the following bill:

H. B. No. 228, A bill to be entitled "An Act to amend Article 5125 of the Revised Civil Statutes of Texas for 1925, so that all male persons, regardless of color, under the age of seventeen (17) years who shall be lawfully committed to the State Juvenile Training School as a delinquent child shall be received as inmates of said training school, and declaring an emergency."

The bill was read second time, the committee report was adopted, and passed to third reading.

On motion of Senator Hardin, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 228 put

on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reld.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally.

Committee Withdrawn.

The Chair announced that there had been a mistake on the part of the House in asking for a free conference committee on S. B. No. 455 as there had been a mistake in the number of the bill. Unanimous consent was received to withdraw the free conference committee on that bill.

Message from the Governor.

The Chair recognized the Doorkeeper who introduced a Messenger from the Governor with the following message:

Executive Department,
Austin, Texas, March 12, 1927.
To the Honorable Senate of the State of Texas.

Gentlemen: With your advice and consent I desire to appoint the following named persons to be notaries public of the counties respectively listed below. These are presented for appointment under authority of Senate Bill No. 29 of the Fortieth Legislature:

Fisher County.

W. T. Patterson, Rotan, Texas.

Van Zandt County.

F. V. Stewart, Grand Saline, Texas.
L. M. Teel, Jr., Wills Point, Texas.

Wood County.

Ralph Newman, Winnsboro, Texas.

Upshur County.

Milton Greer Mell, Gilmer, Texas.

Smith County.

C. M. Martin Sr., Lindale, Texas.
C. W. Thomas, Tyler, Texas.

Camp County.

J. A. Guest, Pittsburg, Texas.
Floyd B. Ford, Pittsburg, Texas.

Travis County.

W. R. Burt, Austin, Texas.
Irene Hamilton, Austin, Texas.
Sam T. Hill, Austin, Texas.
Annie Saxon Johnson, Austin, Texas.
Irma Johnson, Austin, Texas.
Ruth Macow, Austin, Texas.
Pearl Martin, Austin, Texas.
Ruth Myers, Austin, Texas.
Lucy Smithson, Austin, Texas.
S. C. Tompkins, Austin, Texas.

Lampasas County.

Annie Browning, Lampasas, Texas.

Travis County.

Geo. E. Halden, Austin, Texas.

Glasscock County.

W. T. Mann, Garden City, Texas.

Navarro County.

W. M. Walton, Corsicana, Texas.
Respectfully submitted,
DAN MOODY,
Governor of Texas.
Read and referred to the Committee on Governor's Nominations.

House Bill No. 480.

The Chair laid before the Senate the following bill:

H. B. No. 480, A bill to be entitled "An Act to amend Article 952, Revised Criminal Statutes 1925; so as to provide better protection for fish and marine life in the counties of Comal, Guadalupe, Bexar, Kerr, Bandera, and by adding Medina County to the above mentioned counties; repealing Article 953, Revised Criminal Statutes, 1925, and declaring an emergency."

The bill was read second time.

The committee amendment was lost.

Senator Wood sent up the following amendment:

Amendment No. 1, H. B. No. 480.

Amend H. B. No. 480 by adding at end of first paragraph in Section 6, after the word "bass," the following "and ten crappee."

Amendment adopted.

The bill was passed to third reading.

On motion of Senator Wirtz, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 480 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally.

House Bill No. 498.

The Chair laid before the Senate the following bill:

H. B. No. 498, A bill to be entitled "An Act repealing Chapter 9, of the Local and Special Laws of the State of Texas, passed by the Thirty-seventh Legislature at its Regular Session in 1921, relating to the road system of Coryell County."

The bill was read second time, the committee report was adopted, and passed to third reading.

On motion of Senator Hardin, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 498 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally.

House Bill No. 586.

The Chair laid before the Senate the following bill:

H. B. No. 586, A bill to be entitled "An Act providing for the withholding from allotment to the public free school fund the sale of such land as may be gained or added to the State of Texas north of the South Fork of Red River as a result of the final determination of the suit of the State of Oklahoma, complainant, against the State of Texas, defendant; the United States of America, intervener, now pending in the Supreme Court of the United States in which a decree was entered January 3, 1927, ordering the establishment of the one hundredth meridian until such time after the entry of the final boundary decree as the Legislature may consider and provide for final disposition of such additional land as may be decreed to be within the State of Texas, and declaring an emergency."

The bill was read second time, the committee report was adopted, and passed to third reading.

On motion of Senator Reid, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 586 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Bowers.
Berkeley.	Fairchild.
Bledsoe.	Floyd.

Greer.	Real.
Hall.	Reid.
Hardin.	Russek.
Holbrook.	Smith.
Lewis.	Stuart.
Love.	Triplett.
McFarlane.	Ward.
Miller.	Westbrook.
Moore.	Wirtz.
Neal.	Witt.
Pollard.	Wood.
Price.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally.

House Bill No. 593.

The Chair laid before the Senate the following bill:

H. B. No. 593, A bill to be entitled "An Act to levy and collect annually a three dollar road tax against all able bodied male citizens of Wilson County, who are between the ages of twenty-one and forty-five years; providing the manner of assessment and collection of said tax and further providing for a penalty for failure or refusal to pay such tax; repealing all laws in conflict therewith; and declaring an emergency."

The bill was read second time, the committee report was adopted, and passed to third reading.

On motion of Senator Bailey, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 593 put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

Motion to Adjourn.

Senator Holbrook moved to adjourn until 10 o'clock tomorrow. The motion was lost by the following vote:

Yeas—10.

Bailey.	Moore.
Floyd.	Pollard.
Hall.	Real.
Holbrook.	Russek.
Miller.	Witt.

Nays—18.

Berkeley.	Price.
Bledsoe.	Reid.
Bowers.	Smith.
Fairchild.	Triplett.
Greer.	Ward.
Hardin.	Westbrook.
Love.	Wirtz.
McFarlane.	Wood.
Neal.	Woodward.

Absent.

Lewis.	Stuart.
Parr.	

Free Conference Committee Report.

Senator Price sent up the following Free Conference Committee report:

Committee Room,

Austin, Texas, March 11, 1927.

Honorable Barry Miller, President of the Senate and Honorable Robert Lee Bobbitt, Speaker of the House of Representatives.

Sirs: We, your Free Conference Committee, appointed to consider the differences between the two Houses on Senate Bill No. 30, A bill to be entitled an Act, authorizing the cre-

ation of a Junior College in any independent district or city that has assumed control of its schools, having met and after full and free conference have agreed to recommend that the accompanying substitute be adopted instead of the original bill.

Senate Bill No. 30 as amended by the Senate was amended in the House of Representatives by the substitution of the body of committee substitute of House Bill No. 315 for the body of Senate Bill No. 30, and the caption of the House Bill was substituted for the caption of the Senate Bill. The accompanying substitute in the main follows the form of the bill as passed in the House of Representatives, but adjusts the differences between the House and the Senate.

All of which is respectfully submitted.

PRICE,
POLLARD,
MOORE,
BLEDSOE.

On the part of the Senate.

BROWN,
FLY,
HOLDER,
SHAVER,
SNELGROVE.

On the part of the House.

By Pollard and Floyd. S. B. No. 30.

A BILL

To Be Entitled

An Act authorizing the creation of Junior College Districts for the purpose of establishing, maintaining, operating and supporting junior colleges; providing the conditions upon which and the method by which such districts may be created; providing for board of junior college trustees; authorizing the levy, assessment and collection of taxes for the support and maintenance of junior colleges within such districts and the issuance of bonds by such districts recognizing and validating the Acts of cities or independent school districts heretofore had looking to the establishment and organization of junior colleges, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Junior college districts may be created within the State of Texas for the purpose of establish-

ing, operating, maintaining and supporting junior colleges at their own expense, with the powers hereinafter granted and in the method hereinafter provided. Any independent school district in this State, or any city which has assumed control of its school affairs, may be organized into a junior college district, provided it has taxable values for school purposes of not less than twelve million (\$12,000,000.00) dollars, as shown by the last approved tax roll of such independent school district, and provided it has not less than four hundred (400) pupils enrolled in the eighth, ninth, tenth and eleventh grades of its four-year accredited high school course. Any county, or any combination of independent school districts or common school districts, or any combination of independent school districts and common school districts comprising parts of a county which have taxable values of property aggregating not less than eighteen million (\$18,000,000.00) dollars, and which have not less than five hundred (500) pupils enrolled in the four-year accredited high school courses in their eighth, ninth, tenth and eleventh grades may be organized into a junior college district.

Sec. 2. Whenever it is proposed to establish a junior college district in a county, an independent school district, combination of independent school districts or a city which has assumed control of its school affairs, or combination of independent school districts and common school districts as provided herein, a petition praying for an election therefor signed by as many as ten per centum (10%) of the qualified tax paying voters of each of such independent school districts or common school districts, shall be presented to the board of trustees of the independent school district, the city council of the city or the commissioners' court of the county, as the case may be: If the proposed district, is an independent school district it shall be presented to the trustees thereof; if composed of a city which has assumed control of its schools it shall be presented to the governing body of such city; if composed of two or more districts or if composed of an entire county, it shall be presented to the commissioners'

court; and it shall thereupon become the duty of the said board of trustees, council or commissioners' court so petitioned to order an election to be held in the proposed district within any time not less than twenty (20) and not more than thirty (30) days after such order is issued, to determine whether or not such junior college district shall be created and formed, and such order shall contain a description of the metes and bounds of the proposed district, and shall set the date of such election. If a majority of votes cast by the qualified voters of each of such districts shall be in favor of the creation of such junior college district, the same shall be deemed to be formed and created, and said board of trustees, governing body of commissioners' court, as the case may be, shall within ten (10) days after the date of holding of such election make a canvass of the returns and declare the result of such election and enter an order on its minutes establishing the district. The election to create the district shall be held in accordance with the terms of the general election laws, so far as same may be applicable, and at such elections only property taxpayers otherwise qualified shall be permitted to vote.

Sec. 3. After a junior college district less than an entire county has been organized and created, an independent school district, or districts, or common school district or districts may be annexed to said junior college district for junior college purposes only, by an election as provided for in Section 2 hereof upon petition by ten percentum (10%) of the property taxpaying voters in such district or districts to be annexed, provided the election shall be carried by a majority vote, and provided that such annexation shall have been previously approved by the board of trustees of such junior college district.

Sec. 4. The affairs of any junior college district composed of an independent school district or composed of a city which has assumed control of its school affairs, shall be governed and administered under the direction of the board of trustees of such district or the governing body of such city, as the case may be.

The affairs of any junior college

district composed of a county or a combination of districts, as herein provided, shall be governed, administered and controlled by and under the direction of a board of five (5) trustees elected at large from such junior college district; provided that the law governing the election of school trustees in independent school districts shall control in the election of the board of five trustees for such junior college district. The term of office of the members of the board of trustees of such junior college district shall be two years, provided that of the first five members elected two of such members to be chosen by lot, shall serve for only one year, so that thereafter two members shall be elected in one year and three members in the next year.

Sec. 5. The power to locate such junior college within the junior college district shall be vested in the board of trustees of the junior college district. They shall make a selection of the location of the junior college after its establishment has been authorized, as provided in Section 2.

Sec. 6. The junior college district created under this Act shall have the same power to issue bonds for school purposes as independent school districts in the State of Texas now possess. The election for the issuance of such bonds shall be ordered by a board of trustees of any junior college district upon a petition signed by ten percentum (10%) of the qualified taxpaying voters residing in the district praying for the issuance of such bonds, and it shall be the duty of such trustees to order such election and the same shall be held, conducted, and returns thereof made to the board of trustees of such district. The issuance of bonds for junior college purposes and provision for a sinking fund for the retirement thereof shall be in accordance with the laws governing the issuance of bonds in independent school districts, as far as applicable.

Sec. 7. No funds received for school purposes from the State available school fund, nor from the local school fund, (except as provided for in this Act) shall be used for the establishment, support and maintenance of a junior college. Any member of a school board, trustee, superintendent or other person having cus-

tody of or power to dispose of any state available school fund or local school fund who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not less than one hundred (\$100.00) dollars nor more than one thousand (\$1000.00) dollars, or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment.

Sec. 8. In a junior college district composed of one independent school district or of one city which has assumed control of its school affairs, the taxes levied by the board of trustees of the junior college district shall be collected by the officer of such independent school district or city, as the case may be, who is charged by law with the collection of school taxes; and in junior college districts composed of an entire county, or composed of more than one city or school district the taxes levied by the board of trustees of such junior college district shall be collected by the county tax collector, and such collecting officers shall receive therefor the same compensation as is paid them for collecting other school district taxes. Provided, however, that such junior college district shall receive its pro rata part of any excess fees such tax collector under the law must return to the district, city or county where such junior college district is situated.

Sec. 9. It shall be the duty of the board of trustees of the junior college district to prepare an annual budget, showing the amount of money necessary for its use for the ensuing year, and to file a true copy thereof duly certified by its secretary under its seal with the State Department of Education, using such forms as may be prescribed by that department; provided, however, that any failure to make such budget or to have same comply with the requirements of the State Department of Education shall not invalidate any taxes levied by such board.

Sec. 10. The board of trustees of junior college districts shall levy the taxes for such district, and in levying such taxes shall base the levy on the amount of money needed as shown by the budget which they are

required to make out, as set forth in this Act, with a reasonable margin for the loss and expense in collecting the same and shall furnish a copy of the order making such levy to the district assessor, city tax assessor or county tax assessor, as the case may be, and to the State Department of Education at Austin. In a junior college district composed of one independent school district or of a city which has assumed control of its schools, the taxes so levied shall be assessed by the officer assessing taxes for school purposes in such independent school district or city, as the case may be. In assessing taxes for junior college purposes the assessing officer shall use the same values as are placed upon property within such independent school districts or city for school purposes. In junior college districts composed of more than one school district or composed of an entire county the tax so levied shall be assessed by a county tax assessor and in making such assessment the officer shall use the same valuations as are placed upon property within such junior college district for State and county tax purposes. Officers assessing taxes for junior college purposes shall receive as compensation for their services the same compensation as is provided for them for assessing the other taxes assessed by them. The tax so levied, assessed and collected shall be used with such other monies as may be had for that purpose in paying off the bonds issued by the junior college district, interest thereon, and operating expenses of such junior college. Such tax shall not exceed for all purposes twenty-five (25c) cents on the one hundred dollars valuation of taxable property in such district based on its assessed valuation, which tax shall be in addition to all other taxes legally levied in the district. The tax collector shall on or before the 10th day of each month make a report to the board of trustees of the junior college showing all monies collected by him during the past month for such district, and shall turn over to the depository of the district all monies collected for such district during each month.

Sec. 11. If the county board of school trustees shall transfer any pupil from one district, independent or

common, within a junior college district to another independent school district or city which has assumed control of its school affairs which is embraced within the same junior college district, to enable such pupil to attend a high school, then the board of trustees of the junior college district, of which such independent school district or city is a part, shall pay over to the board of trustees of such independent school district to which such pupil has been transferred a sum of money not to exceed six (\$6.00) dollars per month for each pupil so transferred; (provided such pupil attends the high school in such district or town to which he is transferred), plus such amount as may be transferred to such independent school district or city out of the State per capita apportionment for such pupil and less any sum appropriated by the State and paid to such independent school district or city as tuition for the pupil so transferred to such district; provided that such transfer shall be certified by the county superintendent of schools on or before January 1st each year to the secretary of the board of trustees of such junior college district; and provided that the payment of tuition for each transfer shall be made by the junior college district on or before March 1st of each year to the board of trustees of such independent school district, or city.

Sec. 12. The board of trustees of junior college district and the board of trustees of any independent school district may by agreement provide that the high school building and equipment of such independent school district may be used in part by the junior college; and may provide a proper interchange of faculty between the high school and the junior college, but in no event shall any agreement be entered into that will interfere with or impair the training given by such high school.

Sec. 13. The money collected by the tax collector of the junior college district or other money coming into the hands of the board properly belonging to the junior college shall be immediately paid over to the junior college district depository. The depository shall be selected by the board of the junior college district in the same manner as the law pro-

vides for the selection of depositories for independent school districts, and such depository shall qualify as required by such law.

Sec. 14. The board of trustees of the junior college shall have the authority to select a president, dean, or other administrative head, and upon his recommendation, the faculty and other employees of such college, and to fix the compensation of such administrative head, faculty and employees, and the manner of payment of such compensation. The said board of trustees shall authorize and adopt such course of study as they may deem best, provided that such course shall be limited to the first two years of standard college work. The board shall also have the power to fix and collect fees for matriculation, and laboratory, gymnasium, and tuition and for other purposes; and shall have the power to make payment by warrant for any expenses incurred in the support, maintenance and operation of such junior college.

Sec. 15. The members of the board of trustees of the junior college shall receive no compensation for their services, but shall be reimbursed out of the maintenance funds of the junior college district for all legitimate expenses incurred by them in the transaction of their official duties, provided the expenses of each member shall not exceed \$5.00 per day or \$60.00 per year.

Sec. 16. If any independent school district shall before the passage of this Act have organized, created and conducted in the State of Texas a municipal junior college which has been recognized as standard by the Department of Education, or shall have before the passage of this Act in good faith begun the organization of such municipal junior college, then, and in that event, such independent school district is hereby created into a junior college district and its acts in the establishment of such junior college, or looking to the establishment thereof, are hereby in all things validated. No junior college shall hereafter be established or maintained by an institution of higher education either as extension service or otherwise. No part of the Available School Fund of this State shall be used for the establishment support and maintenance of a junior

college; and no State funds shall be used for such purposes and it is declared the policy of the Legislature that no appropriation shall be made out of any funds available to it for appropriation to establish, support, or maintain junior colleges.

Sec. 17. Should the court declare any section or provision of this Act, unconstitutional, such action shall affect only the section or provision declared unconstitutional, and shall not affect any other provision of this Act.

Sec. 18. All laws, and parts of laws, special and general in conflict herewith are hereby specifically repealed insofar as they apply to the subject matter of this Act. Provided, however, that this Act shall in no manner repeal or affect the provisions of any special law creating independent school districts or consolidated independent school districts and all provisions on such special school district laws shall remain in full force and effect. Provided, further, that this Act shall not affect the legality of or interfere with the operation of junior colleges heretofore established, or in the process of being established, or for which bonds have been voted; and the restrictions contained in this bill shall not apply to such colleges that have heretofore been established, or are in the process of establishment, or for which bonds have been voted.

Sec. 19. The fact that there is now no law on the Statute books authorizing the creation of junior colleges, and the further fact that it will be necessary before the taxes for the year 1927 can be collected for the use of a junior college that such taxes be assessed prior to making up the tax roll for the said year, creates an emergency and an imperative public necessity requiring that the constitutional rule requiring all bills to be read on three several days in each House be suspended, and said rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Senator Price moved to adopt the report.

Recess.

On motion of Senator Berkeley, the Senate, at 5:50 o'clock p. m., recessed until 8 o'clock p. m.

After Recess.

The Senate was called to order at 8:00 o'clock p. m., pursuant to recess by Lieutenant Governor Barry Miller.

Senate Concurrent Resolution No. 39.

Senator Witt sent up the following resolution:

Whereas the General Association United Daughters of the Confederacy have erected a Boulder of gray Texas granite at Brownsville, Texas, commemorating the services of Jefferson Davis to the United States in landing troops at Point Isabel during the Mexican War (1846), from which place he joined General Zachary Taylor's Command and became the hero of the battles of Buena Vista and Monterey, which said Boulder bears the following inscription:

Inscription.

Commemorating the Services
To the United States of America
—of—

Jefferson Davis—President C. S. A.
Graduated West Point 1828
Served on Indian Frontier 1828-1835
United States Congress 1845-1846
U. S. A. Col. Commanding Miss.
Troops.

Landed Point Isabel, Texas, 1846
Hero of Buena Vista and Monterey
Declined Post Brigadier Genl.
U. S. A.

Secretary of War, 1835-1857.

U. S. Senator (Miss.) 1849-'51—
'57-'61 (Resigned)
Soldier—Statesman—Martyr
Erected 1926

by

United Daughters of the Confederacy

Whereas, this Boulder also marks the most Southern point on the Jefferson Davis National Highway, which extends from Washington, D. C. to San Francisco, California, the Texas portion of which was legally designated by the Thirty-seventh Legislature;

Whereas, the United Daughters of the Confederacy wish to convey to the State of Texas as a sacred trust, this tribute to one of the nation's greatest statesmen and soldiers;

Therefore, be it resolved by the Senate of Texas, the House concurring, that the Fortieth Legislature

express its appreciation to the United Daughters of the Confederacy for this gift;

Be it further resolved: That this memorial shall be formally accepted for Texas by the Governor of this State on such date as may suit his convenience and that of the committee of the United Daughters of the Confederacy in charge of the dedication.

The resolution was read and adopted by unanimous consent.

House Bill No. 81.

The Chair laid before the Senate the following bill:

H. B. No. 81, A bill to be entitled "An Act to amend 577 of the Code of Criminal Procedure."

The bill was read second time and indefinitely postponed.

House Bill No. 87.

The Chair laid before the Senate the following bill:

H. B. No. 87, A bill to be entitled "An Act enabling cities and incorporated villages to pass zoning regulations, granting full power to said cities and incorporated villages, providing for the creation of districts, declaring purposes in view, providing for the method of procedure, providing for certain changes, providing for a commission, providing for a board of adjustment, providing for its powers and duties, providing certain methods of enforcement and remedies, providing the method to be followed in case of conflict with other laws, providing for the validity for all parts of the law not declared unconstitutional, and declaring an emergency."

The bill was read second time and passed to third reading.

House Bill No. 162.

The Chair laid before the Senate the following bill:

H. B. No. 162, A bill to be entitled "An Act to amend Chapter 176 of the General Laws of the Thirty-eighth Legislature, so as to increase the salary of the judge of the county court of Dallas County at Law No. 1, and the salary of the court of Dallas County at Law No. 2, from thirty-six hundred dollars (\$3600) per annum to forty-eight hundred dollars (\$4800) per annum; prescribing the method of payment, and declaring an emergency."

The bill was read second time, committee report adopted, and passed to third reading.

On motion of Senator Love, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 162 was put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally.

House Bill No. 215.

The Chair laid before the Senate the following bill:

H. B. No. 215, A bill to be entitled "An Act to amend Article 6143, Title 106, providing that the State Board of Control and State Parks Board shall give due consideration to the pecan tree when beautifying State parks or other public property belonging to the State; and declaring an emergency."

The bill was read second time and passed to third reading.

On motion of Senator Ward, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 215 was put on its third reading and final passage, by the following vote:

Yeas—29.

Bailey.	Holbrook.
Berkeley.	Lewis.
Bledsoe.	Love.
Bowers.	McFarlane.
Fairchild.	Miller.
Floyd.	Moore.
Greer.	Neal.
Hall.	Pollard.
Hardin.	Price.

Real.	Ward.
Reid.	Westbrook.
Russek.	Wirtz.
Smith.	Wood.
Stuart.	Woodward.
Triplett.	

Absent.

Parr.	Witt.
-------	-------

The bill was read third time and passed finally.

House Bill No. 227.

The Chair laid before the Senate the following bill:

H. B. No. 227, A bill to be entitled "An Act to repeal all of Article 5131 of the Revised Civil Statutes of Texas."

The bill was read second time and passed to third reading.

House Bill No. 386.

The Chair laid before the Senate the following bill:

H. B. No. 386, A bill to be entitled "An Act to amend Article 3888 of the Revised Civil Statutes of Texas for 1925 so as to make provision for the funds out of which the salary of county judges acting as ex-officio superintendents would be paid; and declaring an emergency."

The bill was read second time and passed to third reading.

On motion of Senator Wirtz, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 386 was put on its third reading and final passage, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Reid.
Fairchild.	Real.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

The bill was read third time and passed finally, by the following vote:

Yeas—28.

Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Holbrook.	Triplett.
Lewis.	Ward.
Love.	Westbrook.
McFarlane.	Wirtz.
Miller.	Witt.
Moore.	Wood.
Neal.	Woodward.

Absent.

Bailey.	Parr.
Hardin.	

House Bill No. 379.

Senator Westbrook moved to suspend the regular order of business and take up H. B. No. 279.

The motion prevailed by the following vote:

Yeas—22.

Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Floyd.	Reid.
Hall.	Smith.
Lewis.	Stuart.
Love.	Triplett.
McFarlane.	Westbrook.
Miller.	Witt.
Moore.	Wood.
Neal.	Woodward.

Nays—1.

Ward.

Absent.

Bailey.	Holbrook.
Fairchild.	Parr.
Greer.	Russek.
Hardin.	Wirtz.

H. B. No. 379, A bill to be entitled "An Act to authorize and empower the State Highway Department of the State of Texas to make an allotment of aid from any monies available in the State Highway Fund and expend same in acquiring, constructing and maintaining any bridge spanning or to span any stream which form the boundary between this and any other State; to build and construct a bridge across any such stream; provided that such bridge shall connect a designated highway of this State with a designated high-

way of such other State and such other State shall have enacted a statute containing provisions similar to this statute providing for the said State to join in the matter of acquiring, constructing and maintaining of such bridge; providing that in no event shall the State Highway Department of this State allot or expend more than one-half of the amount necessary to acquire, construct and maintain any such bridge; expressing the assent of this State to the provisions of an Act of the Sixty-fourth Congress of the United States, approved July 11, 1916, being 'An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes'; memorializing all States adjoining this State to enact a statute of this nature and the Congress of the United States of America to pass an Act whereby any bridge now spanning any boundary between States and connecting designated highways of such States may be condemned for public use and maintained for the public use without charge and to provide the manner of such condemnation, and make appropriations to aid in the purchase, condemnation, construction and maintenance of such bridge for public use without charge to the public, and declaring an emergency."

The bill was read second time and laid on the table subject to call.

Message From the House.

The Chair recognized the Doorkeeper, who introduced a messenger from the House with the following message:

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the Senate

Sir: I am directed by the House to inform the Senate that the House has passed the following bills:

S. B. No. 128, A bill to be entitled "An Act to provide for cooperation between the State of Texas and the United States Department of Agriculture in the destruction of predatory animals—coyotes, wolves, mountain lions, bobcats, and other predatory animals, and rodent pests—i. e., prairie dogs, jack rabbits, pocket gophers, and ground squirrels—appropriating funds for such purposes, and declaring an emergency."

With amendments.

S. B. No. 396, A bill to be entitled "An Act to amend Article 189, Title 8, Revised Civil Statutes, 1925, and declaring an emergency."

S. B. No. 383, A bill to be entitled "An Act to amend Article 1021 of Chapter 2, of Title 15, of the Code of Criminal Procedure, Revised Criminal Statutes of Texas, so as to provide for the payment of twenty dollars per day for each day district attorneys in certain districts attend any session of any the district courts in their respective districts, etc., and declaring an emergency."

Respectfully submitted,

M. LOUISE SNOW,

Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has amended and postponed indefinitely:

S. B. No. 97, A bill to be entitled "An Act to amend Article 3716 of the Revised Civil Statutes of the State of Texas of 1925 by adding thereto a provision as follows: "Provided, however, that in actions begun during the lifetime of the decedent in which executors, administrators, guardians or the heirs of legal representatives of the decedent, have been substituted as parties plaintiff or defendant in which such actions either plaintiff or defendant has testified in open court or by deposition and has been subjected to cross examination by either party may be admitted in evidence upon any subsequent trial of the same issues between the surviving party and the executors, administrators, guardians, heirs or legal representatives of the deceased party, and declaring an emergency."

Failed to pass finally.

H. B. No. 540, A bill to be entitled "An Act to establish and maintain a dairy, poultry, pecan crops, and other native products experiment station on the Miles, Roscoe and Abilene soil type in Taylor, Jones, Callahan or Shackelford County, Texas, within a radius of twenty miles of Abilene, Taylor County, Texas; authorizing the Board of Directors of the Agricultural and Mechanical College of Texas to select a suitable location for said station and empowering said board to es-

tablish and maintain same, to accept donations of lands, water, livestock, seeds, plants and money for the establishment of said station; making an appropriation to pay the cost of establishing said station and for the operation of same, and declaring an emergency."

Respectfully submitted,
M. LOUISE SNOW,
Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills:

S. B. No. 275, A bill to be entitled "An Act relative to white and negro communities, in municipalities, to foster a separation of white and negro residence communities in the interest of peace, safety and welfare, fixing a penalty, and declaring an emergency."

With Committee Substitute.

S. B. No. 269, A bill to be entitled "An Act to amend Article 4619, of the Revised Civil Statutes of the State of Texas, 1925, relating to community property, and the disposition thereof, so as to provide for the control, management and disposition of community property by the wife, when the husband has disappeared and his whereabouts is unknown to the wife for more than six months, and validating conveyances and other transactions of the wife concerning community property heretofore made under such circumstances, and providing the method and procedure for making proof of the existence of the facts necessary to give her such right of control, management and disposition, and declaring an emergency."

Respectfully submitted,
M. LOUISE SNOW,
Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House concurs in Senate Amendments to H. B. No. 480.

Respectfully submitted,
M. LOUISE SNOW,
Chief Clerk, House of Representatives.

Hall of the House of Representatives,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills:

S. B. No. 304, A bill to be entitled "An Act to authorize the creation of corporations in this State under the General Corporation Laws for the purpose of owning, raising, selling and leasing animals used in circuses,

S. B. No. 9, A bill to be entitled "An Act repealing Chapter 184 of the General Laws of the State of Texas, passed by the Thirty-ninth Legislature, being Senate Bill No. 252, entitled: 'An Act granting to every person against whom any judgment of conviction has heretofore been rendered by the Senate of the State of Texas in any impeachment proceedings, a full and unconditional release of any and all acts and offenses of which any such person was so convicted under and by virtue of any such judgment, and to cancel and remit any and all punishment fixed or assessed by any such judgment of said Senate, and declaring an emergency.'"

Respectfully submitted,
M. LOUISE SNOW,
Chief Clerk, House of Representatives.

House Bill No. 394.

On the motion of Senator Bailey, H. B. No. 394 was transferred from the Committee on Civil Jurisprudence to the Committee on Criminal Jurisprudence.

House Bill No. 437.

The Chair laid before the Senate the following bill:

H. B. No. 437, A bill to be entitled "An Act to provide for the creation of public parks in counties having an assessed taxable valuation of one hundred and forty millions dollars or more and providing for the issuance of bonds for the creation and maintenance of such parks and to purchase the requisite lands therefor, providing a tax of five cents on the \$100.00 property valuation to pay the interest on such bonds and to create a sinking fund therefor and further providing that such tax of five cents shall be in addition to all other taxes allowed to such counties by law and providing for the creation of an advisory board under

the direction of the commissioner's court of each county and repealing Article 6078 of the Revised Civil Statutes of 1925 and all other laws in conflict therewith in so far as same apply to counties having an assessed property valuation of one hundred and forty million dollars or more; and declaring an emergency."

The bill was read second time and passed to engrossment.

On motion of Senator Pollard, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 427 was put on its third reading and final passage, by the following vote:

Yeas—27.

Bailey.	Pollard.
Berkeley.	Price.
Bledsoe.	Real.
Bowers.	Reid.
Fairchild.	Smith.
Floyd.	Stuart.
Greer.	Triplett.
Hall.	Ward.
Holbrook.	Westbrook.
Lewis.	Wirtz.
Love.	Witt.
McFarlane.	Wood.
Moore.	Woodward.
Neal.	

Absent.

Hardin.	Parr.
Miller.	Russek.

The bill was read third time and passed finally.

Senate Bill No. 30.

Senator Moore called up the conference report on S. B. No. 30.

The report was adopted.

House Bill No. 87.

On motion of Senator Moore, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 87 was put on its third reading and final passage, by the following vote:

Yeas—25.

Bailey.	McFarlane.
Berkeley.	Moore.
Bledsoe.	Neal.
Bowers.	Pollard.
Floyd.	Price.
Greer.	Real.
Holbrook.	Reid.
Lewis.	Smith.
Love.	Stuart.

Triplett.	Witt.
Ward.	Wood.
Westbrook.	Woodward.
Wirtz.	

Nays—1.

Hall.

Absent.

Fairchild.	Parr.
Hardin.	Russek.
Miller.	

The bill was read third time and passed finally.

House Bill No. 63.

The Chair laid before the Senate the following bill:

H. B. No. 63, A bill to be entitled "An Act amending Article 1087 of the Code of Criminal Procedure of the State of Texas relating to the arrest and custody of a delinquent child or children so as to provide for the detention of such a child or children in counties having a population of fifty thousand or more; and declaring an emergency."

The bill was read second time and passed to third reading.

On motion of Senator Woodward, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 68 was put on its third reading and final passage, by the following vote:

Yeas—29.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Smith.
Greer.	Stuart.
Hall.	Triplett.
Hardin.	Ward.
Holbrook.	Westbrook.
Lewis.	Wirtz.
Love.	Witt.
McFarlane.	Wood.
Miller.	Woodward.
Moore.	

Absent.

Parr.	Russek.
-------	---------

The bill was read third time and finally passed.

House Bill No. 64.

The Chair laid before the Senate the following bill:

H. B. No. 64, A bill to be entitled "An Act amending Article 534 of

the Penal Code of the State of Texas making it a penal offense for any person to cause, encourage or contribute to the delinquency of any minor under the age of seventeen years; and declaring an emergency."

The bill was read second time and passed to third reading.

On motion of Senator Woodward, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 64 was put on its third reading and final passage, by the following vote:

Yeas—29.

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Smith.
Greer.	Stuart.
Hall.	Triplett.
Hardin.	Ward.
Holbrook.	Westbrook.
Lewis.	Wirtz.
Love.	Witt.
McFarlane.	Wood.
Miller.	Woodward.
Moore.	

Absent.

Parr. Russek.

The bill was read third time and passed finally.

House Bill No. 294.

The Chair laid before the Senate the following bill:

H. B. No. 294, A bill to be entitled "An Act validating the appointment of guardians when citation was published, as provided in Chapter 179, Acts, Regular Session, 1917, being now Article 28 of the Revised Civil Statutes of Texas, 1925, and where such citation was not published as provided in Article 4115 of the Revised Civil Statutes of Texas, 1925; and declaring an emergency."

The bill was read second time and passed to third reading.

On motion of Senator Woodward, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 294 was put on its third reading and final passage, by the following vote:

Yeas—28.

Bailey.	Bledsoe.
Berkeley.	Bowers.

Fairchild.	Price.
Floyd.	Real.
Greer.	Reid.
Hall.	Smith.
Hardin.	Stuart.
Holbrook.	Triplett.
Lewis.	Ward.
Love.	Westbrook.
McFarlane.	Wirtz.
Miller.	Witt.
Neal.	Wood.
Pollard.	Woodward.

Absent.

Moore. Russek.
Parr.

The bill was read third time and passed finally.

House Bill No. 314.

The Chair laid before the Senate the following bill:

H. B. No. 314, A bill to be entitled "An Act to amend Section 19 of Article 8306 of the Revised Civil Statutes of Texas of 1925, relating to compensation for employees hired in Texas but injured outside of Texas, so as to provide that said section shall be amended to read as set forth in this Act, and to declare an emergency."

The bill was read second time.

The committee report carrying amendment was read.

Senator Bailey moved to indefinitely postpone the bill.

Senator Witt moved to table the motion.

The motion to table prevailed.

The committee report with amendment was adopted.

The bill was passed to third reading.

On motion of Senator Berkeley, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 314 was put on its third reading and final passage, by the following vote:

Yeas—29.

Bailey.	Love.
Berkeley.	McFarlane.
Bledsoe.	Miller.
Bowers.	Moore.
Fairchild.	Neal.
Floyd.	Pollard.
Greer.	Price.
Hall.	Real.
Hardin.	Reid.
Holbrook.	Smith.
Lewis.	Stuart.

Triplett.
Ward.
Westbrook.
Wirtz.

Witt.
Wood.
Woodward.

Absent.

Parr. Russek.

The bill was read third time and passed finally.

Bill Referred.

After its caption was read, the Chair referred the following bill:

House Bill No. 612, referred to Committee on Criminal Jurisprudence.

House Bill No. 20.

The Chair laid before the Senate the following bill:

H. B. No. 20, A bill to be entitled "An Act to prevent fraud, misrepresentation or unfair practices in the sale of merchandise or other property by means of a plan commonly known as the "endless chain", imposing an occupation tax, fixing penalty and declaring an emergency."

The bill was read second time.

The committee report was adopted.

The bill was passed to third reading.

On motion of Senator Wood, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 20 was put on its third reading an final passage, by the following vote:

Yeas—23.

Berkeley.	Price.
Bledsoe.	Real.
Bowers.	Reid.
Floyd.	Smith.
Greer.	Stuart.
Hall.	Triplett.
Hardin.	Ward.
Lewis.	Westbrook.
Love.	Witt.
McFarlane.	Wood.
Neal.	Woodward.
Pollard.	

Nays—5.

Fairchild.	Russek.
Holbrook.	Wirtz.
Miller.	

Absent.

Bailey. Parr.
Moore.

The bill was read third time and passed finally.

Simple Resolution No. 89.

Senator Bledsoe sent up the following resolution:

Resolved, that the Senate request the House to return to the Senate H. B. No. 586, for further consideration.

The resolution was read and adopted.

House Bill No. 318.

The Chair laid before the Senate the following bill:

H. B. No. 318, A bill to be entitled "Amending Article 705 of Chapter 1, Title 12 of the Penal Code of the State of Texas adopted at the Regular Session of the Thirty-ninth Legislature of the State of Texas relating to public health; regulating the manner of examination of employes of persons, firms, corporations, or common carriers, operating or conducting any hotel, cafe, restaurant, dining car or other public eating place, or operating any bakery or meat market, public dairy or candy factory in this State."

The bill was read second time and passed to third reading.

On motion of Senator Real, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 318 was put on its third reading and final passage, by the following vote:

Yeas—27.

Berkeley.	Pollard.
Bledsoe.	Real.
Bowers.	Reid.
Fairchild.	Russek.
Floyd.	Smith.
Greer.	Stuart.
Hall.	Triplett.
Hardin.	Ward.
Holbrook.	Westbrook.
Lewis.	Wirtz.
Love.	Witt.
McFarlane.	Wood.
Miller.	Woodward.
Neal.	

Absent.

Bailey.	Parr.
Moore.	Price.

The bill was read third time and passed finally.

House Bill No. 326.

The Chair laid before the Senate the following bill:

H. B. No. 326, A bill to be entitled

"An Act for the better enforcement of laws relating to registration of motor vehicles and motorcycles; for the control of vehicles operated on State highways and the protection of the public safety; for the better supervision of vehicles using the State highways; for the establishment of a State patrol system, such patrolmen to wear a badge and uniform and describing such badge and uniform; providing that no arrest shall be made by such patrolmen or other officers by lying in wait for the purpose of trapping drivers of vehicles on the highways suspected of violation of speed restrictions; providing venue of all prosecutions of violations hereunder; providing that no fees shall be paid any officer making an arrest in violation of the provisions of the law; and declaring an emergency."

The bill was read second time.

On motion of Senator Wirtz, the bill was indefinitely postponed.

Senator Stuart moved to reconsider the vote by which H. B. No. 326 was passed.

The motion prevailed.

Adjournment.

Senator Fairchild moved that the Senate adjourn until tomorrow morning at 9:00 o'clock a. m.

The motion prevailed by the following vote:

Yeas—16.

Bailey.	Pollard.
Bowers.	Real.
Fairchild.	Rusek.
Floyd.	Stuart.
Hall.	Triplett.
Hardin.	Ward.
Holbrook.	Wirtz.
Miller.	Witt.

Nays—10.

Berkeley.	Neal.
Greer.	Reid.
Lewis.	Smith.
Love.	Westbrook.
McFarlane.	Wood.

Absent.

Bledsoe.	Price.
Moore.	Woodward.
Parr.	

APPENDIX.

Petitions and Memorials.

Numerous petitions to various Senators for and against the Tobacco Tax Bill were read.

The following petitions and memorials were submitted to Senator Pollard against House Bill No. 69:

O. N. Cole, Tyler, Texas; Charles M. Hix, Tyler, Texas; Wm. Herbert Fifer, Tyler, Texas; Starley Drug Company, Tyler, Texas; T. L. Odom, Odom Drug Company, Inc.; Tyler, Texas; Tom H. DeLay, Pres., Retail Merchants Ass'n., Tyler, Texas; A. B. Tarbutton, Troup, Texas; D. P. Turer, Troup, Texas; L. T. Norman, Troup, Texas; R. E. Bryan, Tyler, Texas; Gus Malavansos, Tyler, Texas; Lovell and Lovell, Gilmer, Texas; Robertson Drug Store, Gilmer, Texas; C. L. Porter, Pres., Mayfield Company, Tyler, Texas; A. F. Sledge, Pres., Moore Grocery Co.; Tyler, Texas; H. O. Rogers, Sec., Retail Merchants Ass'n.; Mineola, Texas; Caldwell, Hughes, DeLay and Allen, Tyler, Texas; Hix Watson Drug Company, Tyler, Texas; Haddad Brothers, Tyler, Texas; Bruce and Human Drug Company, Wills Point, Texas; State National Bank, Wills Point, Texas; R. W. Garrett, Wills Point, Texas; B. W. Bruce, Jr., Wills Point, Texas; Dallas Wholesale Credit Mens Ass'n., Dallas, Texas; C. Unis, Tyler, Texas; Tyler Candy Kitchen, Tyler, Texas; Eltife and Korkmas, Tyler, Texas; Robert Crow, Wills Point, Texas; N. E. McIntosh, Wills Point, Texas; A. G. and Ellis Saleh, Tyler, Texas; Royal Confectionary, Tyler, Texas; E. A. Tharp, Mineola, Texas; Louis Cobb, Coker Drug Company, Tyler, Texas; M. H. Nicholson, Elite Confectionary, Tyler, Texas; James Coats, Tyler, Texas; John L. Campbell, Tyler, Texas; E. P. McKenna, President, Tyler Chamber of Commerce, Tyler, Texas; Ernest S. Goens, Tyler, Texas; Tom C. Sikes, Tyler, Texas; S. L. Watts, Tyler, Texas; Kidd Brothers, Tyler, Texas; C. J. Brogan, Tyler, Texas; Broadway Drug Store, Tyler, Texas; J. F. Willis, Tyler, Texas; Marvin Rowland, Tyler, Texas.

The following memorials were presented in behalf of House Bill No. 69:

J. B. Roark, Supt., Public Schools, Bullard, Texas.

Committee on Enrolled Bills.

Committee Room,
Austin, Texas, March 12, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Enrolled Bills have had S. C. R. No. 35 carefully examined and compared, and find the same correctly enrolled and have this day at 12:10 o'clock p. m., presented the same to the Governor for his approval.

FLOYD, Chairman.

Committee Room,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Enrolled Bills have had S. B. No. 476 carefully examined and compared, and find the same correctly enrolled and have this day at 11:20 o'clock a. m., presented the same to the Governor for his approval.

FLOYD, Chairman.

Committee Room,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Enrolled Bills have had S. B. No. 268 carefully examined and compared, and find the same correctly enrolled and have this day at 11:20 o'clock a. m., presented the same to the Governor for his approval.

FLOYD, Chairman.

Committee Room,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Enrolled Bills have had S. B. No. 349 carefully examined and compared, and find the same correctly enrolled and have this day at 11:20 o'clock a. m. presented the same to the Governor for his approval.

FLOYD, Chairman.

Committee Room,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Enrolled Bills have had S. B. No. 350 carefully examined and compared, and find the same correctly enrolled and have this day at 4:35 o'clock p. m. presented the same to the Governor for his approval.

FLOYD, Chairman.

Committee Room,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Enrolled Bills have had S. B. No. 438 carefully examined and compared, and find the same correctly enrolled and have this day at 4:35 o'clock p. m. presented the same to the Governor for his approval.

FLOYD, Chairman.

Committee Room,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Enrolled Bills have had S. B. No. 277 carefully examined and compared, and find the same correctly enrolled and have this day at 4:20 o'clock p. m. presented the same to the Governor for his approval.

FLOYD, Chairman.

Committee Room,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Enrolled Bills have had S. B. No. 404 carefully examined and compared, and find the same correctly enrolled and have this day at 2:20 o'clock p. m. presented the same to the Governor for his approval.

FLOYD, Chairman.

Committee Room,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Enrolled Bills have had S. B. No. 478 carefully examined and compared, and find the same correctly enrolled and have this day at 2:20 o'clock p. m. presented the same to the Governor for his approval.

FLOYD, Chairman.

Committee Room,
Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Enrolled Bills have had S. B. No. 480 carefully examined and compared, and find the same correctly enrolled and have this day at 2:20 o'clock p. m. presented the same to the Governor for his approval.

FLOYD, Chairman.

Committee Room,

Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Enrolled Bills have had S. B. No. 409 carefully examined and compared, and find the same correctly enrolled and have this day at 2:20 o'clock p. m. presented the same to the Governor for his approval.

FLOYD, Chairman.

Committee on Engrossed Bills.

Committee Room,

Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. C. R. No. 13 carefully examined and compared, and find the same correctly engrossed.

WESTBROOK, Chairman.

Committee Room,

Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. J. R. No. 34 carefully examined and compared, and find the same correctly engrossed.

WESTBROOK, Chairman.

Committee Reports.

Committee Room.

Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

H. B. No. 365, A bill to be entitled "An Act to amend Article 4192 of the Revised Civil Statutes of 1925, providing for the making of oil and gas and other mineral leases by guardians of the estates of minors, and other persons, upon the real estate belonging to the estates of their wards, and declaring an emergency."

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, and be not printed.

BAILEY, Chairman.

Committee Room,

Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on High-

ways and Motor Traffic, to whom was referred

H. B. No. 379, A bill to be entitled "An Act to authorize and empower the State Highway Department of the State of Texas to make an allotment of aid from any monies available in the State Highway fund and expend same in acquiring, constructing and maintaining any bridge spanning or to span any stream which forms the boundary between this and any other state; to build and construct a bridge across any such stream; provided that such bridge shall connect a designated highway of this State with a designated highway of such other state and such other state shall have enacted a statute containing provisions similar to this statute providing for the said state to join in the matter of acquiring, constructing and maintaining of such bridge; providing that in no event shall the State Highway Department of this State allot or expend more than one half of the amount necessary to acquire, construct and maintain any such bridge; expressing the assent of this State to the provisions of an Act of the Sixty-fourth Congress of the United States, approved July 11, 1916, being "An Act to provide that the United States shall aid the states in the construction of rural post roads, and for other purposes;" memorializing all states adjoining this State to enact a statute of this nature and the Congress of the United States of America to pass an Act whereby any bridge now spanning any boundary between States and connecting designated highways of such states may be condemned for public use and maintained for the public use without charge and to provide the manner of such condemnation and make appropriations to aid in the purchase, condemnation, construction and maintenance of such bridge, for public use without charge to the public; and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed, with the following committee amendments:

"Amend H. B. No. 379, Section 3, line 14, by adding between the words "empowered" and "to" the following: "by authority of the Governor."

FLOYD, Chairman.

Austin, Texas, March 14, 1927.
Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Criminal Jurisprudence, to whom was referred

H. B. No. 412, A bill to be entitled "An Act to amend Article 1350, of Title 17, Chapter 3 of the Revised Criminal Statutes of the State of Texas of 1925, providing penalties for persons wilfully and maliciously destroying personal property, and declaring an emergency."

Have had same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, and be not printed.

WOODWARD, Chairman.

Committee Room,

Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Highways and Motor Traffic, to whom was referred

H. B. No. 460, A bill to be entitled "An Act providing that every person registering a motor vehicle, tractor, trailer, semi-trailer or motorcycle, used on the public highways of this State shall accompany his application for registration with a statement upon oath or affirmation, signed by the applicant that such motor vehicle, tractor, trailer, semi-trailer, or motorcycle, was rendered for taxation for the preceding year, and declaring an emergency."

Have had same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, and that it be printed in the Journal.

FLOYD, Chairman.

By Fuchs, Tillotson. H. B. No. 460.

A BILL

To Be Entitled

An Act providing that every person registering a motor vehicle, tractor, trailer, semi-trailer, or motorcycle, used on the public highways of this State shall accompany his application for registration with a statement upon oath or affirmation, signed by the applicant, that such motor vehicle, tractor, trailer, semi-trailer, or motorcycle was rendered for tax-

tion for the preceding year, or that said vehicle was not liable for taxation during said preceding year, or that said vehicle was not owned in whole or in part by the applicant during said preceding year, and providing for the payment of the tax upon said vehicle for the preceding year in lieu of such statement; providing for the administration of said oath or affirmation by the tax collector, and providing a penalty for any misrepresentation made in said statement; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That from and after the taking effect of this Act every owner of a motor vehicle, tractor, trailer, semi-trailer, or motorcycle, used on the public highways of this State, shall accompany his application for registration of said motor vehicle, tractor, trailer, semi-trailer, or motorcycle, with a statement upon oath or affirmation signed by the applicant that such motor vehicle, tractor, trailer, semi-trailer, or motorcycle, was rendered for taxation for the preceding year, or that said vehicle was not liable for taxation for the preceding year, or that said vehicle was not owned by him in whole or in part during said preceding year, provided that any person who is unable to make the affidavit provided for by this Act on account of his failure to render such vehicle for taxation for the previous year, may nevertheless register such vehicle upon payment of the ad valorem tax, which said tax shall be assessed and collected and entered upon a supplemental tax roll by the tax collector as provided in Article 7209 of the Revised Civil Statutes of Texas.

Sec. 2. All tax collectors and their deputies charged with the duty of registering motor vehicles are hereby authorized to administer the oath or affirmation provided for in the preceding section of this Act.

Sec. 3. Any person filing an application for registration of any motor vehicle, tractor, trailer, semi-trailer, or motorcycle, who shall make or execute any false statement in the statement required by this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than thirty-

five dollars, nor more than one hundred dollars.

Sec. 4. The fact that a great number of persons owning motor vehicles in this State do not render same for taxation, creates an emergency and an imperative public necessity demanding the suspension of the constitutional rule requiring all bills to be read on three several days in each House, and that this Act shall take effect from and after its passage, and said rule is hereby suspended, and it is so enacted.

Committee Room,

Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Criminal Jurisprudence, to whom was referred

H. B. No. 394, A bill to be entitled "An Act to amend Article 1056 of the Code of Criminal Procedure of the State of Texas of 1925, changing the pay of grand jurors to three dollars per day and declaring an emergency."

Have had same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, and be not printed.

WOODWARD, Chairman.

Committee Room,

Austin, Texas, March 14, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Criminal Jurisprudence, to whom was referred

H. B. No. 612, A bill to be entitled "An Act to restore the jurisdiction of the County Court at Mason County and to repeal all laws in conflict therewith; and declaring an emergency."

Have had same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, and be not printed.

WOODWARD, Chairman.

Supreme Court Decisions.

(Printed at the request of Senator Bailey.)

Classifying Voters on Basis of Color is Unconstitutional.

Supreme Court decision declares negroes are not to be denied right to vote.

L. A. Nixon, Plaintiff in Error, v. C. C. Herndon and Charles Porras: Supreme Court of the United States, No. 117.

A statute of Texas denying to Negroes the right to vote at primaries is a direct infringement upon the Fourteenth Amendment, the Supreme Court held in this review on writ of error to the District Court, Western District of Texas.

Mr. Justice Holmes delivered the opinion of the Court, the full text of which follows:

This is an action against the Judges of Elections for refusing to permit the plaintiff to vote at a primary election in Texas. It lays the damages at \$5,000. The petition alleges that the plaintiff is a Negro, a citizen of the United States and of Texas and a resident of El Paso, and in every way qualified to vote, as set forth in detail, except that the statute to be mentioned interferes with his right; that on July 26, 1924, a primary election was held at El Paso for the nomination of candidates for a Senator and Representatives in Congress and State and other offices, upon the Democratic ticket; that plaintiff, being a member of the Democratic Party, sought to vote but was denied the right by defendants; that the denial was based upon a Statute of Texas enacted in May, 1923, and designated Article 3093a, by the words of which "in no event shall a Negro be eligible to participate in a Democratic Party primary election held in the State of Texas," etc., and that this statute is contrary to the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

Private Damage Caused.

The defendants moved to dismiss upon the ground that the subject matter of the suit was political and not within the jurisdiction of the court and that no violation of the amendments was shown. The suit was dismissed and a writ of error was taken directly to this court. Here no argument was made on behalf of the defendants but a brief was allowed to be filed by the Attorney General of the State.

The objection that the subject matter of the suit is political is little more than a play upon words. Of course the petition concerns political

action but it alleges and seeks to recover for private damage. This private damage may be caused by such political action and may be recovered for in a suit at law hardly has been doubted for over 200 years, since *Ashby v. White*, 2 *Ld. Raym.* 938, 3 *id.* 320, and has been recognized by this court. *Wiley v. Sinkler*, 179 *U. S.* 58, 64, 65. *Giles v. Harris* 189, *U. S.* 475, 485. See also *Judicial Code*, Section 24 (11), (12), (14). Act of March 3, 1911, c. 231; 36 *Stat.* 1087, 1092. If the defendant's conduct was a wrong to the plaintiff the same reasons that allow a recovery for denying the plaintiff a vote at a final election allow it for denying a vote at the primary election that may determine the final result.

Constitution in Question.

The important question is whether the statute can be sustained. But although we state it as a question the answer does not seem to us open to a doubt. We find it unnecessary to consider the Fifteenth Amendment, because it seems to us hard to imagine a more direct and obvious infringement of the Fourteenth. That Amendment, while it applied to all, was passed, as we know, with a special intent to protect the blacks from discrimination against them. *Slaughter House Cases*, 16 *Wall.* 36. *Strauder v. West Virginia*, 100 *U. S.* 303.

That Amendment "not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any State the power to withhold from them the equal protection of the laws * * * What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law, because of their color?" Quoted from the last case in *Buchanan v. Warley*, 245 *U. S.* 60, 77. See *Yick Wo v. Hopkins*, 118 *U. S.* 356, 374.

The statute of Texas in the teeth of the prohibitions referred to assumes to forbid Negroes to take part in a primary election, the importance of which we have indicated, discrim-

inating against them by the distinction of color alone. States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case.

Judgment reversed.

March 7, 1927.

Ohio Method of Levying Fines in Liquor Cases Adjudged Illegal.

Supreme Court finds Statutes allowing village mayors to pass sentence violate Fourteenth Amendment.

Ed Tumey, Plaintiff in Error, v. State of Ohio; Supreme Court of the United States, No. 527.

Statutes of Ohio, providing for trial by village mayors of one accused of violating the Ohio Prohibition Act, were held, in this review in error to the Supreme Court of Ohio, violative of the Fourteenth Amendment in depriving accused persons of due process of law, because of the pecuniary and other interest which such statutes give mayors in the result of the trial.

W. B. Wheeler, Esq., for plaintiff in error; E. P. Moulinier for defendant in error. Argued Nov. 29, 1926. (*United States Daily*, 3354.)

Mr. Chief Justice Taft delivered the opinion of the Court, the full text of which follows:

The question in this case is whether certain statutes of Ohio in providing for the trial by the mayor of a village of one accused of violating the Prohibition Act of the State deprive the accused of due process of law and violate the Fourteenth Amendment to the Federal Constitution, because of the pecuniary and other interest which those statutes give the mayor in the result of the trial.

Conviction Reversed and then Sustained.

Tumey, the plaintiff in error, hereafter to be called the defendant, was arrested and brought before Mayor Pugh of the village of North College Hill charged with unlawfully possessing intoxicating liquor. He moved for his dismissal because of the disqualification of the mayor to try him under the Fourteenth Amendment.

The Mayor denied the motion, proceeded to the trial, convicted the defendant of unlawful possessing intoxicating liquor within Hamilton County as charged, fined him \$100, and ordered that he be imprisoned until the fine and costs were paid. He obtained a bill of exceptions and carried the case on error to the Court of Common Pleas of Hamilton County. That court heard the case and reversed the judgment, on the ground that the Mayor was disqualified as claimed. 26 Ohio Nisi Prius (n. s.) 580. The State sought review by the Court of Appeals of the first appellate district of Ohio, which reversed the Common Pleas and affirmed the judgment of the Mayor. 23 Ohio Law Reporter, 634.

On May 4, 1926, the State Supreme Court refused defendant's application to require the Court of Appeals to certify its record in the case. The defendant then filed a petition in error in that court as of right, asking that the judgment of the Mayor's court and of the Appellate Court be reversed on constitutional grounds. On May 11, 1926, the Supreme Court adjudged that the petition be dismissed for the reason that no debatable constitutional question was involved in the cause. The judgment was then brought here upon a writ of error allowed by the Chief Justice of the State Supreme Court, to which it was rightly directed. *Matthews v. Huwe, Treasurer*, 269 U. S. 262; *Hetrick v. Village of Lindsey*, 265 U. S. 384. This brings us to the merits of the case.

The defendant was arrested and charged with the unlawful possession of intoxicating liquor at White Oak, another village in Hamilton County, Ohio, on a warrant issued by the Mayor of North College Hill. The Mayor acted under the sections of the State Prohibition Act and Ordinance No. 125 of the Village of North College Hill adopted in pursuance thereof.

Provisions of Ohio Statutes Quoted.

Section 6212-15 (Ohio General Code) provides that "No person shall after the passage of this Act manufacture possess any intoxicating liquors.....".

Section 6212-17 provides that "..... any person who violates the provisions of this Act (General Code, Sec-

tions 6212-13 to 6212-20) for a first offense shall be fined not less than \$100 nor more than \$1,000; for a second offense he shall be fined not less than 300 nor more than \$2,000; for a third and each subsequent offense he shall be fined not less than \$500 nor more than 2,000 and be imprisoned in the State penitentiary not less than one year nor more than five years....."

The Mayor has authority, which he exercised in this case, to order that the person sentenced to pay a fine shall remain in prison until the fine and costs are paid. At the time of this sentence, the prisoner received a credit of 60 cents a day for each day's imprisonment. By a recent amendment, that credit has been increased to one dollar and a half a day. Sections 13716, 13717, Ohio Gen. Code.

Section 6212-18 provides, in part, that "Any justice of the peace, mayor, municipal or police judge, probate or common pleas judge within the county with whom the affidavit is filed charging a violation of any of the provisions of this Act (G. C. Sections 6212-13 to 6212-20) when the offense is alleged to have been committed in the county in which such mayor, justice of the peace, or judge may be sitting, shall have final jurisdiction to try such cases upon such affidavits without a jury, unless imprisonment is a part of the penalty, but error may be prosecuted to the judgment of such mayor, justice of the peace, or judge as herein provided."

Error from the Mayor's Court lies to the Court of Common Pleas of the County and a bill of exceptions is necessary to present questions arising on the evidence. Sections 10359, 10361, Ohio General Code. The appellate review in respect to evidence is such that the judgment can only be set aside by the reviewing court on the ground that it is so clearly unsupported by the weight of the evidence as to indicate some misapprehension or mistake or bias on the part of the trial court or a wilful disregard of duties. *Datesh v. State*, 23 Ohio Nisi Prius (n. s.) 273.

Towns Allowed Half of Fines.

Section 6212-19, provides that "Money arising from fines and forfeited bonds shall be paid one-half

into the State Treasury credited to the general revenue fund, one-half to the treasury of the township, municipality or county where the prosecution is held, according as to whether the officer hearing the case is a township, municipal, or county officer."

Section 6212-37 provides that "the council of any city or village may by ordinance, authorize the use of any part of the fines collected for the violation of any law prohibiting the manufacture and sale of intoxicating liquors, for the purpose of hiring attorneys, detectives, or secret service officers to secure the enforcement of such prohibition law. And such council are hereby authorized to appropriate not more than \$500 annually from the general revenue funds, for the purpose of enforcing the law prohibiting the manufacture and sale of intoxicating liquors, when there are no funds available from the fines collected for the violation of such prohibitory law."

Under the authority of the last section, the Village Council of North College Hill passed Ordinance No. 125, as follows:

"An ordinance to provide for compensation to be paid from the secret service funds of the Village of North College Hill, Hamilton County, Ohio, created by authority of Section 6212-37, of the General Code of Ohio, to detectives, secret service officers, deputy marshals' and attorneys' fees, costs, etc., for services in securing evidence necessary to conviction and prosecuting violation of the law of the State of Ohio prohibiting the liquor traffic.

"Be it ordained by the Council of the Village of North College Hill, Hamilton County, Ohio:

"Section 1. That 50 per cent of all moneys hereafter paid into the treasury of said village of North College Hill, Ohio, that is one-half of the share of all fines collected and paid into and belonging to said village of North College Hill, Ohio, received from fines collected under any law of the State of Ohio, prohibiting the liquor traffic, shall constitute a separate fund to be called the Secret Service Fund to be used for the purpose of securing the enforcement of any prohibition law.

Percentage of Fines Given Deputy Marshals.

"Section 2. That deputy marshals of the Village of North College Hill, Ohio, shall receive as compensation for their services in securing the evidence necessary to secure conviction of persons violating the law of the State of Ohio, prohibiting the liquor traffic, an amount of money equal to 15 per cent of the fine collected, and other fees allowed by law.

"Section 3. That the attorney at law of record prosecuting persons charged with violating the law of the State of Ohio, prohibiting the liquor traffic, shall receive as compensation for legal services an amount equal to 10 per cent of the fine collected, in all cases, whether the plea be guilty or not guilty.

"Section 4. That detectives and secret service officers shall receive as compensation for their services in securing the evidence necessary to secure the conviction of persons violating the law of the State of Ohio, prohibiting the liquor traffic, an amount of money equal to 15 per cent of the fine collected.

"Section 5. That the Mayor of the Village of North College Hill, Ohio, shall receive or retain the amount of his costs in each case, in addition to his regular salary, as compensation for hearing such cases.

"Section 6. This ordinance is hereby declared to be an emergency ordinance, necessary by reason of the flagrant violation of the laws of Ohio, enacted to prohibit traffic in intoxicating liquors, and shall be in effect from and after this passage."

Duties of Mayors as Defined by Ohio Code.

The duties of the Mayor of a village in Ohio are primarily executive. Section 4248 of the General Code of Ohio provides as follows:

"Section 4248. The executive power and authority of villages shall be vested in a mayor, clerk, treasurer, marshal, street commissioner, and such other officers and departments thereof as are created by law.

"Section 4255. He (the Mayor) shall be the chief conservator of the peace within the corporation. He shall be the president of the council, and shall preside at all regular and special meetings thereof, but

shall have no vote except in case of a tie.

Section 4258. He shall see that all ordinances, by-laws and resolutions are faithfully obeyed and enforced.

"Section 4259. The mayor shall communicate to council from time to time a statement of the finances of the municipality, and such other information relating thereto and to the general condition of affairs of the municipality as he deems proper or as may be required by council.

"Section 4262. The mayor shall supervise the conduct of all the officers of the corporation."

The fees which the mayor and marshal received in this case came to them by virtue of the general statutes of the state applying to all State cases, liquor and otherwise. The mayor was entitled to hold the legal fees taxed in his favor. Ohio General Code Sec. 4270, State v. Nolte, 111 O. S. 486. Moreover, the North College Hill village council sought to remove all doubt on this point by providing (sec. 5, Ord. 125, supra), that he should receive or retain the amount of his cost in each case, in addition to his regular salary, as compensation for hearing such cases. But no fees or costs in such cases are paid him except by the defendant if convicted. There is, therefore, no way by which the Mayor may be paid for his service as judge, if he does not convict those who are brought before him; nor is there any fund from which marshals, inspectors and detectives can be paid for their services in arresting and bringing to trial and furnishing the evidence to convict in such cases, except it be from the initial \$500 which the village may vote from its treasury to set the court going or from a fund created by the fines thereafter collected from convicted defendants.

Jurisdiction of Mayors Extended by Prohibition Act.

By an Act of 1913 (103 O. L. 290), the Mayor's Court in villages in Hamilton County and in half a dozen other counties with large cities, was deprived of jurisdiction to hear and punish misdemeanors committed in the county beyond the limits of the corporation. The Prohibition Act, known as the Crabbe Act, adopted

in 1920 (108 O. L.—Pt. 1, 388 and Pt. 2, 1182) changed this and gave to the mayor of every village in the State jurisdiction within the county in which it was situated to try violations of that Act.

Counsel for the State in their brief explain the vesting by State legislatures of this county or jurisdiction in village courts as follows:

"The purpose of extending the jurisdiction in the first instance was to break up places of outlawry that were located on the municipal boundary just outside of the city. The Legislature also faced the situation that in some of the cities the law enforcement agencies were failing to perform their duty, and, therefore in order that those forces that believe in enforcement and upholding of law might have some courts through which process could be had, it gave to mayors county-wide jurisdiction."

It was further pointed out in argument that the system by which the fines to be collected were to be divided between the State and the village was for the proper purpose of stimulating the activities of the village officers to such due enforcement.

The Village of North College Hill in Hamilton County, Ohio, is shown by the Federal Census to have a population of 1,104. That of Hamilton County, including the City of Cincinnati, is more than half a million. The evidence discloses that Mayor Pugh came to office after ordinance No. 125 was adopted, and that there was a division of public sentiment in the village as to whether the ordinance should continue in effect. A petition opposing it and signed by a majority of the voters was presented to Mayor Pugh. To this the mayor answered with the declaration that if the village was in need of finances, he was in favor of and would carry on "the Liquor Court," as it was popularly called but that if the court was not needed for village financial reasons, he would not do so. It appears that substantial sums were expended out of the village treasury from the fund made up of the fines thus collected for village improvements and repairs. The mayor was the owner of a house in the village.

Division of Money Received as Fines

Between May 1, 1923, and December 31, 1923, the total amount of fines for violation of the prohibition law collected by this village court was upwards of 20,000, from which the State received \$8,992.50, North College Hill received \$4,471.25 for its general uses; \$2,697.25 was placed to the credit of the village safety fund, and the balance was put in the secret service fund. Out of this, the person acting as prosecutor in the liquor court received in that period \$1,796.50; the deputy marshals, inspectors and other employes, including the detectives, received \$2,697.75 and \$438.50 was paid for costs in transporting prisoners, serving writs and other services in connection with the trial of these cases. Mayor Pugh received \$696.25 from these liquor cases during that period as his fees and costs, in addition to his regular salary.

The officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided is of course the general rule. *Dimes v. Grand Junction Canal*, 3 H. L. C. 759; *Gregory v. Railroad*, 4 O. S. 675; *Peace v. Atwood*, 13 Mass. 324; *Taylor v. Commissioners*, 105 Mass. 225; *Kentish Artillery v. Gardiner*, 15 R. I. 296; *Moses v. Julian*, 45 N. H. 52; *State v. Crane*, 36 N. J. L. 394; *Railroad Company v. Howard*, 20 Mich. 18; *Stockwell v. Township*, 22 Mich. 341; *Findley v. Smith*, 42 W. Va. 299; *Nettleton's Appeal*, 28 Conn. 268; *Cooley's Constitutional Limitation*, 7th ed., p. 592 et seq. Nice questions, however, often arise as to what the degree or nature of the interest must be. One is in respect to the effect of the membership of a judge in a class of taxpayers or others to be affected by a principle of law, statutory or constitutional, to be applied in a case between other parties and in which the judge has no other interest. Then the circumstance that there is no judge not equally disqualified to act in such a case has been held to affect the question. *Wheeler v. Black*, 25 W. Va. 266, 280; *Peck v. Freeholders of Essex*, 20 N. J. L. 457; *Dimes v. Grand Junction Canal*, 3 H. L. C. 759 (see *Baron Parke's Answer for the Judges*, pp. 785, 787); *Year Book*, 8 Henry 6, 19 s. c. 2 Roll. Abridg. 93; *Evans*

v. Gore, 253 U. S. 245, 247; *Stuart v. Mechanics' & Farmers' Bank*, 19 Johns. 496; *Ranger v. Railroad*, 5 H. L. C. 72. We are not embarrassed by such consideration here for there were available in this case other judicial officers who had no disqualification either by reason of the character of their compensation or their relation to the village government.

Law Found to Violate Fourteenth Amendment.

All questions of judicial qualification may not involve constitutional validity. Thus matters of kinship, personal bias, state policy, remoteness of interest would seem generally to be matters merely of legislative discretion. *Wheeler v. Black*, 25 W. Va., 266, 270. But it certainly violates the Fourteenth Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case.

The Mayor of the Village of North College Hill, Ohio, had a direct personal pecuniary interest in convicting the defendant who came before him for trial, in the \$12 of costs imposed in his behalf, which he would not have received if the defendant had been acquitted. This was not exceptional but was the result of the normal operation of the law and the ordinance. Counsel for the State do not deny this, but assert the validity of the practice as an exception to the general rule. They rely upon the cases of *Ownbey v. Morgan*, 256 U. S. 94; *Murray's Lessee v. Hoboken Land and Improvement Company*, 18 How. 272, 276-280. These cases show that in determining what process of law is, under the Fifth and Fourteenth Amendment, the Court must look to those settled usages and modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, which were shown not to have been unsuited for their civil and political condition by having been acted on by them after the settlement of this country. Counsel contend that in Ohio and in other States, in the economy which it is found necessary to maintain in the administration

of justice in the inferior courts by justices of the peace and by judicial officers of like jurisdiction, the only compensation which the State and county and township can afford is the fees and costs earned by them, and that such compensation is so small that it is not to be regarded as likely to influence improperly a judicial officer in the discharge of his duty, or as prejudicing the defendant in securing justice, even though the magistrate will receive nothing if the defendant is not convicted.

British Law of 1388 Cited in
Opinion.

We have been referred to no cases at common law in England prior to the separation of colonies from the mother country showing a practice that inferior judicial officers were dependent upon the conviction of the defendant for receiving their compensation. Indeed in analogous cases it is very clear that the slightest pecuniary interest of any officer, judicial or quasi-judicial, in the resolving of the subject matter which he was to decide, rendered the decision voidable. *Bonham's Case*, 8 Coke, 118a. Same case, 2 Brownlow and Goldesborough's Reports, 255; *City of London v. Wood*, 12 Modern Reports 669, 687; *Day v. Savage*, Hobart 85, 87; *Hesketh v. Braddock*, 3 Burrows 1847, 1857 and 1858.

As early as the 12th Richard II, A. D. 1388; it was provided that there should be a commission of the justices of the peace, with six justices in the county once a quarter, which might sit for three days, and that the justices should receive four shillings a day "as wages", to be paid by the sheriffs out of a fund made up of fines and amercements, and that that fund should be added to out of the fines and amercements from the courts of the Lords of the Franchises which were hundred courts allowed by the King by grant to individuals.

It was required that the justices of the peace should be knights, esquires or gentlemen of the land, qualifications that were not modified until 1906. The wages paid were used "to defray their common diet", and they soon became absolute. Holdsworth's History of English Law, 288, 289. The wages paid

were not dependent on conviction of the defendant. They were paid at a time when the distinction between torts and criminal cases was not clear. Holdsworth, Vol. 2, 263, 365; Vol. 3, 328; and they came from a fund which was created by fines and amercements collected from both sides in the controversy. There was always a plaintiff, whether in the action for a tort or the prosecution for an offense. In the latter he was called the prosecutor. If he failed to prove his case, whether civil or criminal, he was subject to amercement *pro falso clamore*, while if he succeeded, the defendant was in *misericordia*. See *Commonwealth v. Johnson*, 5 S. & R. Pennsylvania, 195, 198; *Musser v. Good*, 11 S. & R. Pennsylvania, 247. Thus in the outcome some one would be amerced in every case, and the amercements generally went to the Crown, and the fund was considerable. The statute of Richard II remained on the statute book until 1855 when it was repealed by the 18th and 19th Victoria. Meantime the hundred courts by franchise had largely disappeared. The wages referred to were not part of the costs. The costs at common law were the amounts paid either by the plaintiff or prosecutor or by the defendant for the witnesses or services of the court officers. Chitty's Criminal Law, 4 ed. 1841, Vol. 1, 829. See also 14 George III, ch. 20, 1774. For hundreds of years the justices of the peace of England have not received compensation of any kind. Instead of that they were required, upon entering upon the office, to pay certain fees. Holdsworth, Vol. 1, p. 289; 19 Halsbury's Laws of England, sec. 1152. Local judges in towns are paid out of the funds of the corporation.

There was at the common law the greatest sensitiveness over the existence of any pecuniary interest however small or infinitesimal in the justices of the peace. In *Hawkins*, 2nd Pleas of the Crown, we find the following:

"The general rule of law certainly is that justices of the peace ought not to execute their office in their own case: (citing 1 Salk. 396) and even in cases where such proceeding seems indispensably necessary, as in being publicly assaulted or personally abused, or their authority other-

wise contemned while in the execution of their duty, yet if another justice be present, his assistance should be required to punish the offender (Stra. 240.).

"And by the common law, if an order of removal were made by two justices, and one of them was an inhabitant of the parish from which the pauper was removed, such order was illegal and bad, on the ground that the justice who was an inhabitant was interested, as being liable to the poor's rate. (Rex v. Great Chart, Burr. S. C. 194, Stra. 1173.)"

And this strict principle, unless there is relief by the statute, is seen in modern cases. *Queen v. The Recorder of Cambridge*, 8 Ellis & Blackburn, 637; *Regina v. Hammond*, 9 Law Times Report (n. s.) 423; *The Queen v. Rand*, Law Reports, 1st Queen's Bench, 230; *Queen v. Gaisford*, 1st Queen's Bench Division, 381; 19 Halsbury's Laws of England 1156. There was then no usage at common law by which justices of the peace or inferior judicial officers were paid fees on condition that they convicted the defendants, and such a practice certainly cannot find support as due process of law in English precedent. It may be that the principle as stated in Blackstone, Book 3rd page 400, that the King shall neither pay nor receive costs, because it is the King's prerogative not to pay them to a subject and is beneath his dignity to receive them, was misunderstood and led, as suggested by Mr. Lewis in his edition of Blackstone to the practice in some States in minor cases of allowing inferior judges no compensation except by fees collected of the convicted defendant, but whether it did or not, the principle relied on did not support the practice. That practice has prevailed and still prevails in Arkansas, Kentucky, Nebraska, North Carolina, Georgia, Ohio and Texas, and it seems at one time to have obtained in Indiana, Oregon, Illinois and Alabama.

State Laws Cited On Payment of Fees.

In two of these States only has the question been considered by their courts, and it has been held that provision for payment to the judge of fees only in case of conviction does not disqualify him. Those are *Bennett v. State*, 4 Texas Ap-

peals, 72; *Wellmaker v. Terrell*, 3 Ga. App. 791. There is no discussion in either of the question of due process of law. The existence of a statute authorizing the practice seems to have been the controlling consideration. Two other cases are cited. In *Ex parte Guerrero*, 69 Cal. 88, the judge was paid a regular salary fixed by law. The fund out of which this was paid was increased by fees and fines collected in his court, but there is no evidence that payment of his salary was dependent on the amount of his collections or convictions. In *Herbert v. Baltimore County*, 97 Md. 639, the action was by a justice of the peace against a county for services in criminal cases. A new law limited him to \$10 a month. The statement of the case does not distinctly show that in convictions he would have had a larger compensation from his costs collected out of the defendant, but this may be assumed from the argument. His contention was that the new law was invalid because it did not give the defendants before him due process. The court held against him, chiefly on the ground that he must be satisfied with the compensation the law afforded him. Responding to his argument that the new law was invalid because justices would be induced to convict when in justice they should acquit, the court said:

"We can not recognize the force of this suggestion, founded as it is upon the assumption that the justices will violate their oaths and the duties of their office and not upon anything that the law authorizes to be done."

So far as the case goes, it is an authority for the contention of the State, but the issue thus raised was not considered at length and was not one which in such an action the Court would be patient to hear pressed by the justice whose constitutional rights were not affected. *Tyler v. Court*, 179 U. S. 405, 409; *California Reduction Co. v. Sanitary Reduction Works*, 199 U. S. 306, 318.

Provisions in Other States For Payment of Court.

In the case of *Probasco v. Raine, Auditor*, 50 O. S. 378, the question arose whether the fee of 4 per cent, payable to county auditors for plac-

ing omitted property on the duplicate list for taxation, which required investigation and quasi-judicial consideration, was invalid. The Court held that it was not, and that the objection urged there could not be based on the argument that a man could not be a judge in his own case, that the auditor had no case to be adjudged, but that on the contrary he was the taxing officer, before whom other parties were cited to appear and show cause why they should not bear their equal burden of taxation. The Court said that the action of the auditor was not final so as to cut off further inquiry, but that the whole case might be gone into anew by proper proceedings in court, an exact opposite conclusion was reached by the United States Circuit Court for the Northern District of Ohio in *Meyers v. Shields*, 61 Fed. 713, 725 et seq.

In other States than those above mentioned the minor courts are paid for their services by the State or county regardless of acquittal or conviction, except that in Virginia the minor courts receive one-half of the usual fees where there is acquittal. Four States have put into their constitutions a provision that that State must pay the costs in such cases in case of acquittal. They are California, Florida, Louisiana and South Carolina.

The strict common law rule was adopted in this country as one to be enforced where nothing but the common law controlled, and citizens and taxpayers have been held incompetent to sit in suits against the municipal corporation of which they have been residents. *Diveny v. Elmira*, 51 N. Y. 506; *Corwein v. Hames*, 11 Johns. 76; *Clark v. Lamb*, 2 Allen 396; *Dively v. Cedar Falls*, 21 Iowa 565; *Fulweiler v. St. Louis*, 61 Mo. 479; *Petition of New Boston*, 49 N. H. 328; *Commonwealth v. McLane*, 4 Gray 427; *Fine v. St. Louis Public Schools*, 30 Mo. 166, 173. With other courts, however, and with the legislatures, the strict rule seemed to be inconvenient, impracticable and unnecessary, and the view was taken that such remote or minute interest in the litigation might be declared by the Legislature not to be a reason for disqualification of a judge or juror.

A case, much cited, in which this conclusion was reached and in which

the old English corporation cases were considered was that of *City Council v. Pepper*, 1 Richardson (S. C.) 364. The recorder of the City of Charleston sentenced a non-resident of the city for violation of a city ordinance requiring him to take out a license for what he did. The contention was that the defendant was a non-corporator and non-resident and not subject to the jurisdiction of the city court; that the recorder was a corporator and interested in the penalty and therefore was not competent to try the cause. The Court said (p. 366) in respect to *Hesketh v. Braddock*, 3 Burrows 1847, *supra*:

"It will be remarked that that case depends altogether upon the common law, and if the city court depended upon the same for its jurisdiction, the objection might be fatal. But the establishment and jurisdiction of the city court commences with the Act of 1801. By that Act it is clothed with the power of trying all offenses against the by-laws of the city, and for that purpose is given concurrent jurisdiction with the court of Sessions. This grant of power is from all the people of the State, through their Legislature, and surely they have the power to dispense with the common law objection, that the corporators were interested and ought not to be intrusted with the enforcement of their laws against others. The authority given to the city court to try all offenders against the city ordinances, impliedly declares, that notwithstanding the common law objection, it was right and proper to give it the power to enforce the city laws against all offenders. That there was great reason in this can not be doubted, when it is remembered that the interest of the corporators is so minute as not to be even thought of, by sheriff, juror or judge. It is very much like the interest which similar officers would feel in enforcing a State law, the sanction of which was a penalty. The sum thus to be recovered goes in exoneration of some part of the burden of government to which every citizen is subjected; but such interest has no effect upon the mind. It is too slight to excite prejudice against a defendant. The same thing is the case here. For the judge, sheriff and jurors, are

members of a corporation of many thousand members. What interest, of value, have they in a fine of twenty dollars? It would put a most eminent calculator to great trouble to ascertain the very minute grain of interest which each of these gentlemen might have. To remove so shadowy and slight an obligation, the legislature thought proper to clothe the city court, consisting of its judge, clerk, sheriff and jurors, with authority to try the defendant, and he can not now object to it."

Cases Mentioned As Supporting View.

And the same view is taken in *Commonwealth v. Ryan*, 5 Mass. 90; *Commonwealth v. Reed*, 1 Gray, 472, 475; *Thomas v. Mt. Vernon*, 9 Ohio 290; *Commissioners v. Lytle*, 3 Ohio, 289; *Wheeling v. Black*, 25 W. Va. 266, 280; *Board of Justices v. Fennimore*, 1 N. J. L. 190; *Foreman v. Mariana*, 43 Ark. 324; *Cartersville v. Lyon*, 69 Ga. 577; *Omaha v. Olmstead*, 5 Neb. 446; *Hill v. Wells*, 6 Pickering 104; *Commonwealth v. Emery*, 11 Cushing 406; *Barnett v. State*, 4 Tex. App. 72; *Welmaker v. Terrell*, 3 Ga. App. 791; *State v. Craig*, 80 Maine 85.

Mr. Justice Cooley in his work on *Constitutional Limitations*, 7th edition, page 594, points out that the real ground of the ruling in these cases is that "interest is so remote, trifling and insignificant that it may be fairly supposed to be incapable of affecting the judgment of or of influencing the conduct of an individual. And where penalties are imposed, to be recovered only in a municipal court, the judge or jurors in which would be interested as corporators in the recovery, the law providing for such recovery must be regarded as precluding the objection of interest. But the learned judge then proceeds:

"But except in cases resting upon such reasons, we do not see how the legislature can have any power to abolish a maxim which is among the fundamentals of judicial authority."

Referring then to a remark in the case of the *Matter of Leefe*, 2 Barb. Cr. 37, that the people of the State when framing their Constitution might possibly establish so great an anomaly, if they saw fit, the learned author says:

"Even this must be deemed doubt-

ful since the adoption of the Fourteenth Article of the Amendments to the Federal Constitution, which denies to the State the right to deprive one of life, liberty or property, without due process of law."

From this review we conclude that a system by which an inferior judge is paid for his service only when he convicts the defendant has not become so embodied by custom in the general practice either at common law in this country that it can be regarded as due process of law unless the costs usually imposed are so small that they may be properly ignored as within the maxim *de minimis non curat lex*.

Fee System Declared Unfair to Defendants.

The Mayor received for his fees and costs in the present case \$12 and from such costs under the Prohibition Act for seven months he made about \$100 a month, in addition to his salary. We can not regard the prospect of receipt or loss of such an emolument in each case as a minute, remote, trifling or insignificant interest. It is certainly not fair to each defendant brought before the Mayor for the careful judicial consideration of his guilt or innocence that the prospect of such a prospective loss by the Mayor should weigh against his acquittal.

These are not cases in which the penalties and the costs are negligible. The field of jurisdiction is not that of a small community engaged in enforcing its own local regulations. The court is a state agency imposing substantial punishment, and the cases to be considered are gathered from the whole county by the energy of the village marshals and detectives regularly employed by the village for the purpose. It is not to be treated as a mere village tribunal for village peccadilloes. There are doubtless mayors who would not allow such a consideration as \$12 costs in each case to affect their judgment in it, but the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof

required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused denies the latter due process of law.

Other Provisions of Law Ruled Unconstitutional.

But the pecuniary interest of the mayor in the result of his judgment is not the only reason for holding that due process of law is denied to the defendant here. The statutes were drawn to stimulate small municipalities in the country part of counties in which there are large cities, to organize and maintain courts to try persons accused of violations of the Prohibition Act everywhere in the county. The inducement is offered of dividing between the State and the village the large fine provided by the law for its violations. The trial is to be had before a mayor without a jury, without opportunity for retrial and with a review confined to questions of law presented by a bill of exceptions, with no opportunity by the reviewing court to set aside the judgment on the weighing of evidence, unless it should appear to be so manifestly against the evidence as to indicate mistake, bias or wilful disregard of duty by the trial court.

It specifically authorizes the village to employ detectives, deputy marshals and other assistants to detect crime of this kind all over the county, and to bring offenders before the mayor's court, and it offers to the village council and its officers a means of substantially adding to the income of the village to relieve it from further taxation. The mayor is the chief executive of the village. He supervises all the other executive officers. He is charged with the business of looking after the finances of the village. It appears from the evidence in this case, and would be plain if the evidence did not show it, that the law is calculated to awaken the interest of all those in the village charged with the responsibility of raising the public money and expending it, in the pecuniarily successful conduct of such a court. The mayor represents the village and can not escape his representative capacity. On the other hand, he is given the judicial duty first of determining whether the defendant is guilty at all, and second

having found his guilt to measure his punishment between \$100 as a minimum and \$1,000 as a maximum for first offenses, and \$300 as a minimum and \$2,000 as a maximum for second offenses. With his interest as mayor in the financial condition of the village and his responsibility therefor, might not a defendant with reason say that he feared he could not get a fair trial or a fair sentence from one who would have so strong a motive to help his village by conviction and a heavy fine? The old English cases cited above in the days of Coke and Holt and Mansfield are not nearly so strong. A situation in which an official perforce occupies two practically inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him. It is, of course, so common to vest the mayor of villages with inferior judicial functions that the mere union of the executive power and the judicial power in him can not be said to violate due process of law. The minor penalties usually attaching to the ordinances of a village council, or to the misdemeanors in which the mayor may pronounce final judgment without a jury, do not ordinarily involve any such addition to the revenue of the village as to justify the fear that the mayor would be influenced in his judicial judgment by that fact. The difference between such a case and the plan and operation of the statutes before us is so plain as not to call for further elaboration.

Counsel for the State argue that it has been decided by this Court that the legislature of a State may provide such system of courts as it chooses, that there is nothing in the Fourteenth Amendment that requires a jury trial for any offender, that it may give such territorial jurisdiction to its courts as it sees fit, and therefore that there is nothing sinister or constitutionally invalid in giving to a village mayor the jurisdiction of a justice of the peace to try misdemeanors committed anywhere in the county, even though the Mayor presides over a village of 1,100 people and exercises jurisdiction over offenses committed in a county of 500,000. This is true and is established by the decisions of this

court in *Missouri v. Lewis*, 101 U. S. 22, 30; In *re Claassen*, 140 U. S. 200. See also *Carey v. State*, 70 Ohio State 121. It is also correctly pointed out that it is completely within the power of the legislature to dispose of the fines collected in criminal cases as it will, and it may therefore divide the fines as it does here, one-half to the State and one-half to the village by whose mayor they are imposed and collected. It is further said with truth that the legislature of a State may and often ought to stimulate prosecutions for crime by offering to those who shall initiate and carry on such prosecutions rewards for thus acting in the interest of the State and the people. The legislature may offer rewards or a percentage of the recovery to informers. *United States v. Murphy & Morgan*, 16 Pet. 203. It may authorize the employment of detectives. But these principles do not at all affect the question whether the State by the operation of the statutes we have considered has not vested the judicial power in one who by reason of his interest, both as an individual and as chief executive of the village, is disqualified to exercise it in the trial of the defendant.

It is finally argued that the evidence shows clearly that the defendant was guilty and that he was only fined \$100 which was the minimum amount, and, therefore that he can not complain of a lack of due process, either in his conviction or in the amount of the judgment. The plea was not guilty and he was convicted. No matter what the evidence was against him, he had the right to have an impartial judge. He seasonably raised the objection and was entitled to halt the trial because of the disqualification of the judge which existed because of his direct pecuniary interest in the outcome and because of his official motive to convict and to graduate the fine to help the financial needs of the village. There were thus presented at the outset both features of the disqualification.

The judgment of the Supreme Court of Ohio must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Judgment reversed.

FORTY-SECOND DAY.

Senate Chamber,
Austin, Texas,

Tuesday, March 15, 1927.

The Senate met at 9:00 o'clock a. m. pursuant to adjournment, and was called to order by Lieutenant Governor Barry Miller.

The roll was called, a quorum being present, the following Senators answering to their names:

Bailey.	Neal.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent.

Parr.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with.

Committee Reports.

(See Appendix.)

Bills and Resolutions.

House Bill No. 227.

The Chair laid before the Senate on third reading the following bill:

H. B. No. 227, A bill to be entitled "An Act to repeal all of Article 5131 of the Revised Civil Statutes of Texas, and declaring an emergency."

The bill was read third time and passed finally.

House Bill No. 387.

The Chair laid before the Senate on third reading the following bill:

H. B. No. 387, A bill to be entitled "An Act to amend Section Two, Article 6479, Chapter 11, Title No. 112 of the 1925 Revised Civil Statutes of Texas, relating to operation of passenger trains on railroads in Texas."

The bill was read third time and passed finally.